(1986). The inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Matsushita,* 475 U.S. at 587 (citations omitted). However, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.' " *Id.* (citation omitted). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson,* 477 U.S. at 248. "Factual disputes that are irrelevant or unnecessary will not be counted." *Id.*

B.

1.

*7 Addressing first the United States' claim of unauthorized operation of RCRA treatment unit, the United States alleges that since 2003 Rineco has been an owner or operator of a unit for the treatment of hazardous waste, without a required permit, in violation of section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and APCEC Regulation No. 23 §§ 270.1, 270.10. Rineco, in turn, argues that as a matter of law, Rineco's TMW is exempt from regulation under APCEC Regulation No. 23 § 261.6(c)(1) and thus operation of the TMW does not require a RCRA permit.

a.

The Court has carefully considered the matter and agrees with the United States that Rineco's hazardous waste activities are not eligible for the recycling process exemption as a matter of law because, under APCEC Regulation No. 23 § 261.6(a), [10] as an intermediary to a BIF, Rineco is not eligible for the recycling exemption set forth in APCEC Regulation No. 23 § 261.6(c)(1). [11] Under § 261.6(a)(2)(ii), recyclable materials, *i.e.* hazardous wastes burned for energy recovery in BIFs, are not subject to the requirements for generators, transporters, and storage facilities listed in §§ 261.6(b) and 261.6(c), but instead are regulated under Subparts C through H of Part 266. Under Subpart H of Part 266, "[o]wners and operators of facilities that store or treat hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of Sections 264, 265, and 270 of this regulation." APCEC Regulation No. 23 § 266.101(c)(1). The Subpart H regulations provide that "[t]hese standards apply to storage and treatment by the burner as well as to storage and treatment facilities operated by intermediaries (processors, blenders, distributors, etc.) between the generator and the burner." *Id.* Rineco is an intermediary fuel blender that treats hazardous wastes in the TMW that are sold to and burned for energy recovery in BIFs, including cement kilns, which are regulated under Part 266, Subpart H. Thus, the exemption set forth in § 261.6(c)(1) is inapplicable to Rineco.

Rineco concedes that recyclable materials subject to APCEC Regulation No. 23 § 261.6(a) do not qualify for the recycling exemption but argues that § 261.6(a) does not apply in the instant case because Rineco only recycles metal in the TMW. While Rineco admits that a substantial percentage of oil and char resulting from the treatment process in the TMW is blended into HWDF and sent to BIFs where it is burned for energy recovery, Rineco contends that only the percentage of metal resulting from the treatment process should be counted as recyclable materials in assessing whether § 261 .6(a) applies and that focusing on the other materials exiting the TMW that are sent for use as fuel is a "red herring." In support of this argument, Rineco relies on a passage in EPA's Office of Solid Waste and Emergency Response Memorandum 9521.1994(01), entitled "Regulation of Fuel Blending and Related Treatment and Storage Activities" (the "Guidance"), which provides as follows:

> *8 There may be some recycling operations at a fuel blending facility that are exempt from permitting, even though the fuel blending process itself is not exempt. The exemption is only available to units that are solely engaged in permit-exempt recycling; if the reclaimed materials are sometimes sent for use as a fuel, then the recycling unit would be subject to the permitting standards.

Rineco, states that "[a]s the [G]uidance explains, if the reclaimed materials are themselves sometimes sent for use as a fuel, then the recycling unit would be subject to permitting standards (*i.e.* the unit would not "solely" be engaged in recycling activities)." In contrast, states

Rineco, "if the reclaimed materials are *never* sent for use as a fuel, like the reclaimed metal in this case, the recycling unit exemption would apply." Rineco states that because the material recycled in the TMW is metal, and metal recycled in the TMW is never burned for energy recovery, § 261.6(a)(2)(ii) does not apply to metal recycling in the TMW. Consequently, states Rineco, the materials placed into the TMW are subject to the general requirements of APCEC Regulation No. 23 § 261.6, including the recycling unit exemption in § 261.6(c)(1), and the TMW would be exempt from regulation under RCRA.

The Court rejects Rineco's assertion that the word "solely" in the Guidance exclusively refers to the ultimate use of the recycled material and that the focus should be exclusively on the percentage of metal generated from the TMW while ignoring all other outputs from the treatment process. Clearly, metal is not the only material recycled in the TMW, and APCEC Regulation No. 23 § 261.6(a)(2) specifically provides that recyclable materials, *i.e.* hazardous wastes burned for energy recovery in BIFs, are not subject to this section. Rineco points to the word "reclaimed" in the Guidance, but in the preamble to the hazardous waste regulations EPA explained that although "commercial products reclaimed from hazardous wastes are products, not wastes, and so are not subject to the RCRA Subtitle C regulations," waste-derived fuel resulting from the reclamation process continues to be governed by RCRA:

> We caution, though, as we did in the proposal, that this principle does not apply to reclaimed materials that are not ordinarily considered to be commercial products, such as waste-waters or stabilized wastes. The provision also does not apply when the output of the reclamation process is burned for energy recovery or placed on the land. These activities are controlled by the provisions of the definition dealing with using hazardous wastes as ingredients in fuel or land-applied products. For instance, if a spent solvent is treated and blended with oil to sell as a fuel, that waste-derived fuel is still subject to RCRA jurisdiction.

50 Fed.Reg. 614, 634 n. 20, Final Rule-Hazardous Waste Management System: Definition of Solid Waste, January 4, 1985.[12] Thus, if reclaimed materials from the TMW are sometimes sent for use as a fuel, as indisputably occurs with oil and char, then the TMW cannot be exempt from the RCRA permitting requirements of Part 266, Subpart H.

*9 There is certainly evidence in the record showing that a substantial percentage of the output from the TMW is not metal, even though the recovery of metal clearly takes place and is one of the purposes of the TMW. While the metal recycled in the TMW is not burned for energy recovery, the deposition testimony of three former Rineco employees (whom Rineco describes as "disgruntled") and certain Rineco documents support the United States' contention that a substantial percentage of oil and char resulting from the treatment process in the TMW is blended into HWDF and sent to BIFs where it is burned for energy recovery. Michael W. Tallent ("Tallent"), a former Rineco Production Chemist, testified that he worked as senior production chemist/warehouse manager when the first TMW was installed at Rineco and that the primary purpose of the TMW was not to recycle metal, but to blend hazardous waste into fuel which was burned for energy recovery at BIFs. Similarly, S. Bradley Cummock ("Cummock"), a former Rineco Director of Operations and who was an employee of Rineco from January 1996 through July 2003, testified that the primary purpose of the TMW, especially from a financial standpoint, was to blend hazardous waste into fuel for cement kilns, not to recycle metal. Brad Patty ("Patty"), the former Rineco Director of Operations after Cummock and who worked as Director of Operations at Rineco from August 2003 to January 2006, also testified that the primary intent of the TMW was to blend hazardous waste into fuel for cement kilns, not to recycle metal.

Certain Rineco documents concerning operation of the TMW corroborate the testimony of Rineco's former Production Chemist and Directors of Operations. Between 2003 and 2008, the annual TMW Mass Balance Reports show that the TMW treatment process produced more than twice as much oil and char as metal. In addition, a TMW Monthly Profit Analysis for the month of January 2006 (which is under seal) shows the percentage of Rineco's profit from the TMW that was derived from metal sales, a percentage that certainly seems inconsistent

with Rineco's claim that the primary purpose of the TMW is to recycle metal. Rineco characterizes its own Mass Balance Reports as "incomplete and inaccurate" and its TMW Monthly Profit Analysis as "incomplete and based on mere speculation," but Rineco cannot create facts issues with its own conflicting assertions. [13]

In sum, the Court determines that Rineco's TMW unit does not qualify for the recycling process exemption set forth in APCEC Regulation No. 23 § 261.6(c)(1) because, under APCEC Regulation No. 23 § 261.6(a)(2)(ii), hazardous wastes that are burned for energy recovery in a BIF (as are the wastes managed in Rineco's TMW unit), are subject to APCEC Regulation No. 23 Part 266, Subpart H. Were the Court to uphold Rineco's interpretation, any hazardous waste treatment unit that processed an incidental amount of recovered material that is not burned for energy recovery would qualify for the recycling exemption. Such an interpretation is contrary to the regulations and RCRA's purpose to ensure the proper treatment, storage and disposal of hazardous waste so as to minimize the present and future threat to human health and the environment. *Meghrig*, 516 U.S. at 483. [14]

b.

***10** The Court additionally agrees with the United States that the TMW is not eligible for the recycling exemption for a second reason because substantial hazardous wastes that are treated in the TMW are destroyed by thermal treatment and not recycled in the TMW. With respect to such activity, EPA has stated:

> [W]e wish to clarify that materials being burned in incinerators or other thermal treatment devices, other than boilers and industrial furnaces, are considered to be "abandoned by being burned or incinerated" under § 261.2(a)(1)(ii), whether or not energy or material recovery also occurs.... In our view, any such burning (other than in boilers and industrial furnaces) is waste destruction subject to regulation either under Subpart O of Part 264 or Subpart O and P of Part 265. If energy or material recovery occurs, it is ancillary to the purpose of the unit-to destroy wastes by means of thermal treatment-and so does not alter the regulatory status of the device or the activity.

48 Fed.Reg. 14472, 14484, Proposed Rules, April 4, 1983.

Rineco claims that burning cannot occur in the TMW because the "materials are indirectly heated in an oxygen-depleted chamber." Rineco's use of the phrase "oxygen-depleted" is ambiguous, however, and Rineco has provided no actual evidence that oxygen is absent from the TMW. Carl Wikstrom, Director of Research and Development for Rineco, only states that the materials are heated in an "oxygen-depleted chamber via an external heat source to break the adhesive bonds of the materials that are attached to the surface of the metal." In contrast, the TMW Patent indicates that waste materials are placed in an oxygen limited chamber, not an oxygen depleted chamber. The Patent states:

> The feed hopper provides the waste material to a first chamber through an airlock. The airlock, for some embodiments, is a knife gate, which largely isolates the first chamber from the feed hopper. The airlock limits air infusion into the first chamber, which is, for some embodiments, a sub-ambient pressure chamber. This isolation removes dependence on a dynamic seal. Also, the improved seals limit or prevent appreciable influx of air into the system, thereby reducing the chances for unplanned oxidation and also reducing the amount of non-condensable gases that flow through the system.... For some embodiments, an inerting gas (e.g. carbon dioxide, nitrogen, etc.) is injected into the airlock to displace air or other oxidizing agents. This reduces the oxidation that can occur in the subsequent stages of the waste processing system.

Rineco's own documentation evidences destruction or burning of materials in the TMW. On December 28, 2005, EPA asked Rineco to "complete the attached table regarding volumes of waste managed at your facility for 2003, 2004 and 2005." EPA provided a table, based on Rineco's description of the TMW, showing yearly volume of hazardous waste received (liquid and solid phases), yearly volume into the TMW, yearly volume from the

TMW divided in six outputs (water, oil, char, metal, vapors and inerts), and yearly volume into and out of the cryogenic unit. In a letter to EPA dated January 17, 2006, Rineco stated that its responses to the table were based on pounds, the numbers provided were Rineco's "best estimate," and the vapor and inerts categories were combined because Rineco was unable to separate them. The United States notes that the table showed that between 2003 and 2005, of the approximately 18.7 million lbs. of waste fed into the TMW annually, more than 2.6 million lbs. or at least 13.9% was unaccounted for, *i.e.* disposed of, burned, or incinerated in the treatment process, and that during the same period approximately 2 million lbs. or 10.7% of the output from the TMW was vapor/inerts, which are vented to the TOU where they are destroyed through burning and incineration. The United States notes as well that the presence of more than 4.4 million lbs. or at least 23.5% char indicates that the destruction of organic materials takes place in the TMW. [15]

***11** Rineco does not specifically dispute the above percentages but contends that the table "does not reflect all of the materials exiting the TMW and, thus, any attempt to create a mass-balance report from this information is fatally flawed." Rineco states that "[i]mportantly, the chart does not reflect the amount of solids (other than char and metal) exiting the unit" and that "[t]herefore, the [United States'] allegations that 13.9% of the materials placed into the TMW are destroyed based on the numbers in the January 2006 chart are just plain wrong and misleading to the Court."

As previously noted, Rineco's claim that its table "does not reflect all of the materials exiting the TMW" and that its own Mass Balance Reports "are incomplete and inaccurate" fails to create a genuine issue of material fact concerning the evidence indicating that some 13.9% of the materials are burned or destroyed in the TMW. In its January 17th response to EPA's information request, Rineco made no mention that the six outputs from the TMW did not reflect the total output from the TMW and Rineco did not correct the table to add an output for "solids (other than char and metal) exiting the unit." The United States argues that Rineco clearly did not do so because the "inerts" category on the table describes the same waste materials that Rineco is now calling "solids." Certainly, neither Rineco's Patent nor Rineco's Fuel Blending & Recycling Processes flow chart describe "solids (other than char and metal) exiting the unit" but they do identify "inerts." The Patent states "[t]he metal separation system handles non-volatile fractions, including char, metal, and nonmagnetic inert substances such as, for example, glass, gravel, soil, sand, etc," and Rineco's flow chart indicates that "char, metal, and inerts" are the only solid phase materials that exit the TMW. There is no separate reference to "solids" exiting the TMW.

In any case, it is undisputed that vapor from the TMW is vented to the TOU where it is destroyed through burning and incineration. [16] Thus, a portion of inputs to the TMW are volatilized by the high temperature, vented to the TOU, and destroyed through burning and incineration. In addition, the presence of substantial char shows that the destruction of organic materials takes place in the TMW. [17] Accordingly, the exemption for the recycling process found at APCEC Regulation No. 23 § 261.6(c)(1) does not apply because certain of the organic hazardous wastes processed in the TMW are not recycled but instead are destroyed by thermal treatment. [18]

c.

For the foregoing reasons, the Court grants summary judgment to the United States on its First Claim for Relief under RCRA (Unauthorized Operation of RCRA Treatment Unit) as set forth in its original complaint.

2.

The Court now turns to the United States' claim of unauthorized operation of RCRA treatment unit. The United States alleges that since 2003 Rineco has been an owner or operator of a unit for the storage of hazardous waste, without a required permit, in violation of section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and APCEC Regulation No. 23 §§ 270.1, 270.10. Rineco, however, argues that it has a valid and effective RCRA permit for the storage of hazardous waste at its facility that covers hazardous waste related to the TMW.

***12** Under APCEC Regulation No. 23 § 270.1(b), storage of hazardous waste by any person who has not applied for or received a RCRA permit is prohibited. Under

RCRA section 1004(33), 42 U.S.C. § 6903(33), "[t]he term 'storage,' when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste." "Storage" is defined as "the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere." APCEC Regulation No. 23 § 260.10.

Rineco does not dispute that it is storing hazardous waste related to the TMW at its facility and it does not dispute that after shredding, waste materials are placed in totes which are stored near the shredders before treatment in the TMW. Rineco obtained its RCRA hazardous waste permit in August 1999 before it began operation of the TMW and the staging area of the totes for the TMW is not included in the existing permit. Thus, Rineco's failure to modify its existing RCRA permit to expressly include the hazardous waste storage areas related to the TMW is a violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and APCEC Regulation No. 23 §§ 270.1, 270.10.[19] Accordingly, the Court grants summary judgment to the United States on its Second Claim for Relief under RCRA (Unauthorized Operation of RCRA Storage Unit) as set forth in its original complaint.

3.

The Court now turns to the United States' claim of unauthorized operation of RCRA disposal unit. The United States alleges that since 2003 Rineco has been an owner or operator of a unit for the disposal of hazardous waste, without a required permit, in violation of section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and APCEC Regulation No. 23 §§ 270.1, 270.10. Rineco, however, argues that it does not dispose of any hazardous waste related to the TMW at its facility.

As set forth above, Rineco's January 17th table regarding volumes of waste managed at its facility for 2003, 2004 and 2005 shows that Rineco disposes of hazardous waste related to the TMW. Again, Rineco's claim that its table "does not reflect all of the materials exiting the TMW" fails to create a genuine issue of material fact in the face of the evidence indicating that some 13.9% of the materials are burned or destroyed in the TMW. In addition, Rineco does not dispute that vapor, one of the outputs from the TMW, is vented to the TOU for destruction, nor does Rineco controvert the findings of the recent EPA inspection by Duster or similar testimony from former Rineco employees Tallent, Cummock, and Patty that fugitive VOC air emissions are "leaking" from the TMW and other units at the Rineco facility.

In addition to disposal occurring at the TMW itself, it is not disputed that char and other materials from the TMW are blended into HWDF and sent off-site to BIFs where it is burned and emitted into the atmosphere or disposed or "deposited" as a waste in a landfill after the burning process is completed. Rineco argues that in order for "disposal" to occur, RCRA regulations require that the disposal must take place on the land or water at the Rineco facility. The term "disposal" is not so limited, however, but encompasses "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters." 42 U.S.C. § 6903(3); APCEC Regulation No. 23 § 260.10. The mere act of sending waste off-site for disposal does not make a unit a disposal unit; rather, Rineco is engaged in the unauthorized operation of a disposal unit because it is incorporating the char into a fuel, and the char is ultimately discharged into the air or deposited in a landfill. Accordingly, the Court grants summary judgment to the United States on its Third Claim for Relief under RCRA (Unauthorized Operation of RCRA Disposal Unit) as set forth in its original complaint.

4.

*13 The Court now turns to the United States' claim of failure to notify of hazardous waste activity. The United States alleges that Rineco has failed to file, with EPA or ADEQ, a notification of hazardous waste activity related to the TMW in compliance with Section 3010 of RCRA, 42 U.S.C. § 6930. Rineco, however, argues it submitted notification of its hazardous waste activity related to the TMW to ADEQ as part of its Hazardous Waste Annual Reports for 2003, 2004, 2005, 2006, and 2007, noting that as to each report, it indicated that the facility was a recycler of hazardous waste, included hazardous wastes recycled in the TMW in the list of regulated hazardous

wastes, and included hazardous wastes recycled in the TMW in the waste generation totals for the facility.

Section 3010 of RCRA requires Rineco to provide notice of the location and a general description of any treatment, storage or disposal activity conducted at the facility. 42 U.S.C. § 6930. Rineco's general reference on the RCRA Subtitle C Site Identification form that it is a recycler of hazardous waste and its reference to the hazardous wastes recycled in the TMW as well as its hazardous waste totals at the facility is not sufficient. Section 3010 requires the operator of a hazardous waste treatment, storage or disposal facility to file specific reports. *McClellan Ecological Seepage Situation v. Perry,* 47 F.3d 325, 329-330 n. 7 (9th Cir.1995). Rineco does not dispute that it has failed to file with EPA or ADEQ a notification of its hazardous waste activity expressly related to the TMW. Accordingly, the Court grants summary judgment to the United States on its Fourth Claim for Relief under RCRA (Failure to Notify of Hazardous Waste Activity) as set forth in its original complaint.

5.

The Court now turns to the United States' claim of failure to provide financial assurances. The United States alleges that Rineco has failed to establish financial assurance requirements for closure of the TMW and related storage units at the facility in violation of section 3004(a) of RCRA, 42 U.S.C. § 6924(a), and APCEC Regulation No. 23 § 264, Subpart H.

Rineco does not dispute that it has failed to establish financial assurances related to the TMW but instead contends that because the TMW is exempt from regulation, Rineco is not required to comply with financial assurances requirements for closure of the TMW. As set forth above, however, Rineco does not qualify for the recycling exemption in APCEC Regulation No. 23 § 261.6(c)(1). As a result, Rineco must establish financial assurances for the TMW.[20] Accordingly, the Court grants summary judgment to the United States on its Fifth Claim for Relief under RCRA (Failure to Provide Financial Assurances) as set forth in its original complaint.

C.

One final matter concerns Rineco's affirmative defenses. Rineco argues that if it is not entitled to summary judgment, genuine issues of fact on Rineco's affirmative defenses preclude the granting of summary judgment in favor of the United States, including whether EPA is equitably estopped from asserting claims against Rineco based on the decision of the delegated authority (*i .e.* ADEQ) that the TMW does not require a RCRA permit, whether EPA is exercising selective enforcement against Rineco, and whether Rineco is being denied equal protection. However, both Rineco and the United States have moved for summary judgment, those motions are ripe for consideration, and Rineco has not come forward with facts to support any of its affirmative defenses. Claims for equitable estoppel do not run against the federal government unless the party claiming estoppel establishes, among other things, that the government engaged in some sort of affirmative misconduct. *Miller v. U.S. Through Farmers Home Admin.,* 907 F.2d 80, 82-83 (8th Cir.1990). To establish a prima facie claim of selective prosecution, a party must demonstrate that others similarly situated to it were not prosecuted and that the decision to enforce the law against it was motivated by discriminatory purpose. *United States v. Perry,* 152 F.3d 900, 903 (8rth Cir.1998). To establish a viable equal protection claim, Rineco must show that it was treated differently than similarly situated entities for purposes of the challenged government action. *Koscielski v. City of Minneapolis,* 435 F.3d 898, 901 (8th Cir.2006). Rineco has shown no evidence of affirmative misconduct or discriminatory purpose by the United States to support its estoppel and selective prosecution claims, and Rineco has shown no evidence that similarly situated entities received favorable treatment so as to establish a viable equal protection claim. As Rineco has shown no evidence to support these or any other affirmative defenses, summary judgment in favor of the United States is not precluded.[21]

III.

*14 For the foregoing reasons, the Court grants the United States' motion for summary judgment [doc. # 40] as to liability on each of the five claims asserted in its original complaint and denies Rineco's motion for summary judgment [doc. # 13]. This matter will proceed

as to any appropriate civil penalties and as to the three remaining claims in the United States' amended and supplemental complaint. [22]

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2009 WL 801608

Footnotes

1 The Court deferred ruling on these motions pending a settlement conference before a Magistrate Judge in late October 2008 that proved unsuccessful. Following that settlement conference, the Court, by Order dated November 24, 2008 [doc. # 85], granted a motion of Rineco for leave to file what it claimed to be newly discovered summary judgment evidence. In addition, the Court in that same November 24th Order granted leave of the United States to amend and supplement its complaint to add three additional claims. These additional claims are not addressed in the parties' cross-motions for summary judgment now under consideration.

2 Subsequent program revision applications were later approved. *Id.*

3 APCEC is the environmental policy-making body for Arkansas and ADEQ implements those policies.

4 All paragraph numberings within APCEC Regulation No. 23 are the same as those used in the equivalent Federal Part such that someone seeking, for example, the State equivalent to 40 C.F.R. § 261.3(a)(2)(i) need only refer to APCEC Regulation No. 23 § 261.3(a)(2)(i). Because Arkansas' regulations are substantially identical to EPA's regulations, analysis of the federal scheme can overlay and define that of Arkansas. *Cf. United States v. Power Engineering Co.*, 191 F.3d 1224, 1228 (10th Cir.1999) (determining that because Colorado's regulations are substantially identical to EPA's regulations, analysis of the federal scheme can overlay and define that of Colorado).

5 In *Harmon*, the United States Court of Appeals for the Eighth Circuit held that the federal government's right to pursue an enforcement action under RCRA attaches only when a state's authorization is revoked or when a state fails to initiate any enforcement action, and that EPA's practice of overfiling, in those states where it has authorized the state to act, oversteps the federal agency's authority under RCRA. 191 F.3d at 901-02. The Eighth Circuit's decision in *Harmon* concerning EPA's authority to overfile has not been without some criticism. *See, e.g., United States v. Power Engineering Co.*, 303 F.3d 1232 (10th Cir.2002). Such is of no consequence here, however, as the State of Arkansas has not initiated an enforcement action against Rineco concerning the matters before the Court.

6 These wastes contain variable levels of ignitability, corrosivity, reactivity, and toxicity, and include arsenic, barium, benzene, cadmium, carbon tetrachloride, chromium, cresol, 1, 4-dichlorobenzene, lead, mercury, wastewater treatment sludge, silver, vinyl chloride, spent halogenated and non-halogenated solvents, spent cyanide, acrylic acide, carbamic acid, DDT, sulfuric acid, toluene, xylene, etc.

7 Rineco does not dispute that the TMW is a type of thermal treatment unit (although Rineco states that the TMW does not, as argued by the United States, apply heat to change both the chemical and physical character and composition of the waste fed into the TMW but, rather, that the heat merely breaks the adhesive bonds of the material that are attached to the surface of the metal). Thermal treatment units that do not use internal controlled flame combustion, as the TMW does not, are classified as "miscellaneous units" and subject to the standards for the management of hazardous waste set forth in APCEC Regulation No. 23 Part 264, Subpart X, §§ 264.600-264.603. The United States does not dispute that miscellaneous units may nevertheless be potentially exempt from regulation under RCRA.

8 According to the United States, ADEQ's staff, including the Hazardous Waste Division Director, believe that the TMW requires a permit but that Devine took a different position. Devine's April 12th letter does not, however, revoke ADEQ's previous correspondence with the company stating that the agency's conclusion was based on Rineco's compliance with six conditions and, thus, Devine's determination seemingly was made in the context of Rineco's representations of the specific purpose and operation of the TMW

9 Rineco does not dispute that notice of the commencement of this action was given to the State of Arkansas in accordance with 42 U.S.C. § 6928(a)(2).

10 APCEC Regulation No. 23 § 261.6(a) provides in part:

> (a)(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of this section, except for the materials listed in paragraphs (a)(2) and (a)(3) of this section. Hazardous wastes that are recycled will be known as "recyclable materials."

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under subsections C through H of section 266 of this regulation and all applicable provisions in section 270 of this regulation and 40 CFR Part 124:

(i) Recyclable materials used in a manner constituting disposal (subsection C);

(ii) Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under subsection O of section 264 or 265 of this regulation (subsection H).

11 APCEC Regulation No. 23 § 261.6(c)(1) provides:

(c)(1) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subsections A through L, AA, BB, and CC of sections 264 and 265, and under sections 266, 268, and 270 of this regulation and 40 CFR Part 124, and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation except as provided in § 261.6(d).)

12 Rineco proffers EPA's Revisions to the Definition of Solid Waste, Final Rule, 73 Fed.Reg. 64668-01, October 30, 2008. These revisions are of no help to Rineco, however, as the final rule clarifies that the exclusion for hazardous secondary materials that are legitimately recycled "does not include the recycling of hazardous secondary materials that are ... burned to recover energy or used to produce a fuel or otherwise contained in fuels (40 C.F.R. § 261.2(c)(2))." *Id.* at 64669, 64670, 64710, 64751.

13 Rineco, as previously noted, may not rest on mere allegations or denials of its pleadings, but must come forward with specific facts showing that there is a genuine issue for trial. *Matsushita,* 475 U.S. at 587. *See also* APCEC Regulation No. 23 § 261.2(f) (respondents in actions to enforce regulations implementing subtitle C of RCRA who raise a claim that certain material is conditionally exempt from regulation must demonstrate that they meet the terms of the exemption; in doing so, they must provide appropriate documentation to demonstrate that the material is exempt from regulation).

14 Citing EPA's RCRA Orientation Manual 2006, Rineco argues that EPA has found that distillation units engaged in the recycling of hazardous spent solvents are exempt recycling units under 40 C.F.R. § 261.6(c)(1) even though the sludge created in the distillation process is sent off-site to BIFs. The RCRA Orientation Manual does not support Rineco's position. As the Manual states, "[n]ot all hazardous wastes pose the same degree of hazard when recycled," and "[w]hile RCRA specifically exempts some wastes when recycled, some recycling processes may still pose enough of a hazard to warrant some degree of regulation." It may be true that EPA has concluded that certain unrefined waste-derived fuels and oils from petroleum refineries may justify exemption from RCRA Subtitle C, but EPA also has concluded that "[t]he process of recycling hazardous waste by burning it for energy recovery may pose significant air emission hazards. Therefore, EPA [has] established specific operating standards for units burning hazardous waste for energy recovery." Rineco, it should be noted, does not treat a single predictable pre-distillation waste stream from a petroleum refinery, but rather more than 400 different types of hazardous waste containing variable levels of ignitability, corrosivity, reactivity, and toxicity.

15 Rineco proffers as "newly discovered evidence" a declaration from Dr. W. Roy Penney, a Professor in the Department of Chemical Engineering at the University of Arkansas, who stated that "complete combustion in the TMW is impossible." Dr. Penney does not, however, conclude that *no* combustion occurs in the TMW and he does not dispute that combustion and destruction occurs in the TOU. Rineco has also proffered a declaration from an attorney, David E. Polter, who essentially opines on the legal issues in this matter. However, the Court will not consider for purposes of today's decision legal opinions that "attempt to tell the court what result to reach." *Dow Corning Corp. v. Safety National Cas. Corp.,* 335 F.3d 742, 751-52 (8th Cir.2003).

16 As indicated in the Patent, "[t]he residual non-condensable vapors are directed to a thermal oxidizer unit through an exhauster. As is known in the art, the thermal oxidizer unit destroys air toxics and volatile organic compounds ["VOC"] that are discharged."

17 On April 15-16, 2008, David Duster ("Duster"), an environmental scientist with EPA, conducted a RCRA focused compliance evaluation at the Rineco facility and documented that fugitive VOC emissions were escaping from the TMW and other units at the Rineco facility. Similarly, former Rineco employees Tallent, Cummock, and Patty testified to fires occurring at the TMW and to VOCs and particulates that were leaked and discharged from the TMW into the air at the Rineco facility. Rineco points to the testimony of David Crew ("Crew"), ADEQ's on-site inspector, but Crew only testified that "to the best of my knowledge," there has never been a fire in the TMW. Crew did, however, testify that there have been fugitive emission issues with regard to the TMW, and he also testified that the scrap metal is a by-product of the entire process of the TMW, not the primary process, and that he believed and continues to believe that the TMW requires a RCRA permit. Rineco claims the TMW is "designed" for recycling metal, but the possibility of recycling is mentioned only twice in the 13-page Patent, stating first that certain metal (which can be fairly large, e.g. whole cans,

etc.) moving along on a conveyor belt that progresses beyond the field of a magnet "can be recycled or disposed" and, second, that the systems and processes described in the Patent "permit recycling of various materials, which would otherwise not be permitted." The word "disposal," in contrast, is referenced numerous times throughout the Patent, which, as previously noted, "relates generally to waste processing, and more particularly to systems and methods for processing heterogeneous waste materials."

18 Rineco also references EPA's "A Citizen's Guide to Thermal Desorption" ("Guide"), which describes the use of thermal desorption under the supervision of EPA as a method to clean up pollution at Superfund sites stating that "[t]he dust and harmful chemicals are separated from the gases and disposed of safely. The clean soil is returned to the site." Rineco, however, neither returns "clean soil" to its facility nor disposes of the separated materials in a Subtitle C landfill and so the Guide is not applicable.

19 The Court agrees with the United States that the permit requirements apply to the staging area for the totes given that when material is waiting to be placed in the TMW, there are emissions that can occur that would otherwise not be occurring in the absence of the TMW.

20 During oral argument, Rineco acknowledged that the financial assurances argument turns on the exemption issue and that if the Court finds that the TMW is covered under RCRA, which the Court has today so done, then Rineco is required to establish financial assurances for the TMW.

21 Rineco alludes to seeking additional discovery on its affirmative defenses but a party opposing summary judgment who believes that he or she has not had adequate opportunity to conduct discovery must seek relief pursuant to Fed.R.Civ.P. 56(f), which requires that party to show what specific facts further discovery might unveil. *United States v. Casino Magic Corp.*, 293 F.3d 419, 426 (8th Cir.2002) (citations omitted). This, Rineco has failed to do. In addition, during a telephone conference held on November 19, 2008, Rineco agreed that discovery could be stayed until such time as the Court ruled on the parties' cross-motions for summary judgment on liability.

22 As noted in the November 24th Order, the Court will consider for purposes of determining any appropriate civil penalties the seriousness of the violation, any good faith efforts to comply, the harm caused by the violation, any economic benefit derived from noncompliance, the violator's ability to pay, the government's conduct, and the clarity of the obligation involved. *United States v. Ekco Housewares, Inc.*, 62 F.3d 806, 815 (6th Cir.1995). With respect to economic benefit, the Court reiterates that the goal of the economic benefit analysis is to prevent a violator from profiting from its wrongdoing, level the economic playing field, and prevent violators from gaining an unfair competitive advantage. *United States v. Municipal Authority of Union Township*, 150 F.3d 259, 263-64 (3rd Cir.1998) (citation omitted). *See also Pound v. Airosol Company, Inc.*, 498 F.3d 1089, 1099-1100 (10th Cir.2007) (in determining economic benefit of noncompliance under Clean Air Act ("CAA"), "the better argument" is that "any profits realized through the sale, or offer of sale, of a prohibited product ought to be included when assessing the economic benefit of a CCA violation, the rationale being that one ought not to profit from one's wrongful conduct;" rejecting the argument that "the economic benefit is more properly measured by considering the costs that it would have incurred to comply with the CAA (*i.e.*, the cost of reformulation)"); *Ekco Housewares*, 62 F.3d at 816 (district court did not abuse its discretion in determining that the amount of the RCRA penalty could be based on the economic benefit gained through noncompliance, including cost savings realized by noncompliance, and district court properly considered the deterrence effect not just on defendant but on the regulated community as a whole). Thus, while it may be that the economic benefits calculation ideally begins with the costs that should have been spent to achieve compliance, *Airosol Company*, 498 F.3d at 1100, the Court will consider all relevant documentation that could lead to a reasonable approximation of economic benefit to Rineco during the period that the TMW has been operating without a permit, including: (1) the cost of applying for and obtaining a RCRA permit; (2) TMW profit from the start of its operation to the present; (3) the pollution control costs associated with the RCRA permit; and (4) other benefits such as any competitive advantage Rineco has obtained by charging generators a lower price to dispose of waste in a non-regulated process.

End of Document

UNITED STATES ENVIRONMENTAL PROTECT.....
REGION 6
1445 Ross Avenue
Dallas, Texas 75202-2733

JUN 2 4 2016

Mr. Estuardo Silva
Louisiana Department of Environmental Quality
Office of Environmental Services
Waste Permits Division
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313

RE: Draft Hazardous Waste Modified Operating and Post Closure Permit
Chemical Waste Management, Inc.
7170 John Brannon Road
Carlyss, LA 70665
Permit# LAD00077201-OP-RN-MO-1
AI# 742/PER20140007

Dear Mr. Silva:

EPA has the following comments on the draft Hazardous Waste Operating and Post Closure Permit for the Chemical Waste Management, Inc. facility located at 7170 John Brannon Road, Carlyss, LA 70665 (Draft Permit). Chemical Waste Management, Inc. (Chem Waste) seeks to add two oil recovery units (ORUs), two thermal desorber units (TDUs), and 19 associated tanks to its operations at its Carlyss, Louisiana facility. The ORUs will be utilized to separate recoverable oils from drilling fluids, refinery tank bottoms, commercially exempt waste, and other non-hazardous and hazardous waste. The TDUs will treat contaminated tank bottoms, sludge, catalyst slurry oil, and other non-hazardous and hazardous waste. The TDUs will be designed to separate organic constituents from a waste stream by condensing the organic components, which would allow for the recovery or disposal of the contaminants. The non-condensable gases will be routed to a thermal oxidizer unit (TOU). The TDU is proposed to be permitted as a miscellaneous unit.

Condition II.E.25.e of the Draft Permit provides that "[o]ne hundred and eighty (180) days before planned construction, the Permittee must submit finalized engineering specifications and operating parameters for the proposed Thermal Desorber Units to the Administrative Authority for approval. The information submitted must comply with the requirements of this permit and L.A.C. 33:V. Chapter 32, and all applicable regulations." Chapter 32 is entitled "Miscellaneous Units", and is the State equivalent of 40 C.F.R. Part 264, Subpart X. Due to the absence of any proposed engineering specifications, performance test, operating conditions, operating parameters, monitoring and recordkeeping requirements, we have identified permit requirements for the TDU and TOU below that we believe are required by the regulations for operation of the TDU and TOU.

How the TDU and TOU are permitted determine the appropriate permit requirements for the units. The material being treated in the TDU and the TOU is already a hazardous waste. Thermal treatment after a material becomes a hazardous waste is fully regulated under RCRA, 54 Fed. Reg. 50968, 50973 (December 11, 1989). The combustion of the non-condensable gases in the TOU meets the

definition of "thermal treatment" in L.A.C. 33:V.109 [40 C.F.R. § 260.10] and thus requires a RCRA permit. The TOU would meet the definition of incinerator in L.A.C. 33:V.109 [40 C.F.R. § 260.10] (an enclosed device that uses controlled flame combustion). However, rather than permitting the TOU as an incinerator, LDEQ could permit the TDU and TOU together as a miscellaneous unit under L.A.C. 33:V. Chapter 32 [40 C.F.R. Part 264, Subpart X]. If this occurs, then LDEQ is required to include in the permit requirements from L.A.C. 33:V. Chapters 3, 5, 7, 17, 19, 21, 23, 25, 27, 29, 31, 4301.F, H, 4302, 4303 and 4305, all other applicable requirements of L.A.C. 33:V. Subpart 1, and of 40 C.F.R. Part 63, Subpart EEE and 40 C.F.R. Part 146, that are appropriate for the miscellaneous unit being permitted.[1]

The decisions as to what appropriate requirements would be included in the permit would be left to LDEQ. However, we believe that the permit conditions would be similar to those set forth in the enclosed Consent Agreement and Final Order, In Re: US Ecology Texas, Inc. and TD*X Associates, LP, EPA Docket Nos. RCRA-06-2012-0936 and RCRA-06-2012-0937, filed October 4, 2012. These permit conditions would include, but not be limited to: 1) a startup, shutdown, and malfunction plan; (2) a performance test, which includes meeting a 99.99% destruction removal efficiency for each principle organic hazardous constituent and meeting certain emission limits; (3) automatic waste feed cutoff system; (4) operating parameters; and (5) investigation, recordkeeping, testing, and reporting requirements. This position was also previously communicated to LDEQ in a letter from EPA to Mr. J. D. Head dated May 2, 2016, in which a copy was sent to LDEQ. A copy of this letter is also enclosed.

If you have any questions, please feel free to call me at (214) 665-8022.

Sincerely,

Susan Spalding
Associate Director
Hazardous Waste Branch (6MM-R)
Multimedia Division

Enclosure

[1] The equivalent Federal provisions are 40 C.F.R. Part 264, Subparts I through O, AA, BB, and CC, 40 C.F.R. Part 270, 40 C.F.R. Part 63, Subpart EEE, and 40 C.F.R. Part 146. 40 C.F.R. § 264.601.

Attachment D

TRADEBE

At Work

SOLID DISTILLATION SYSTEM

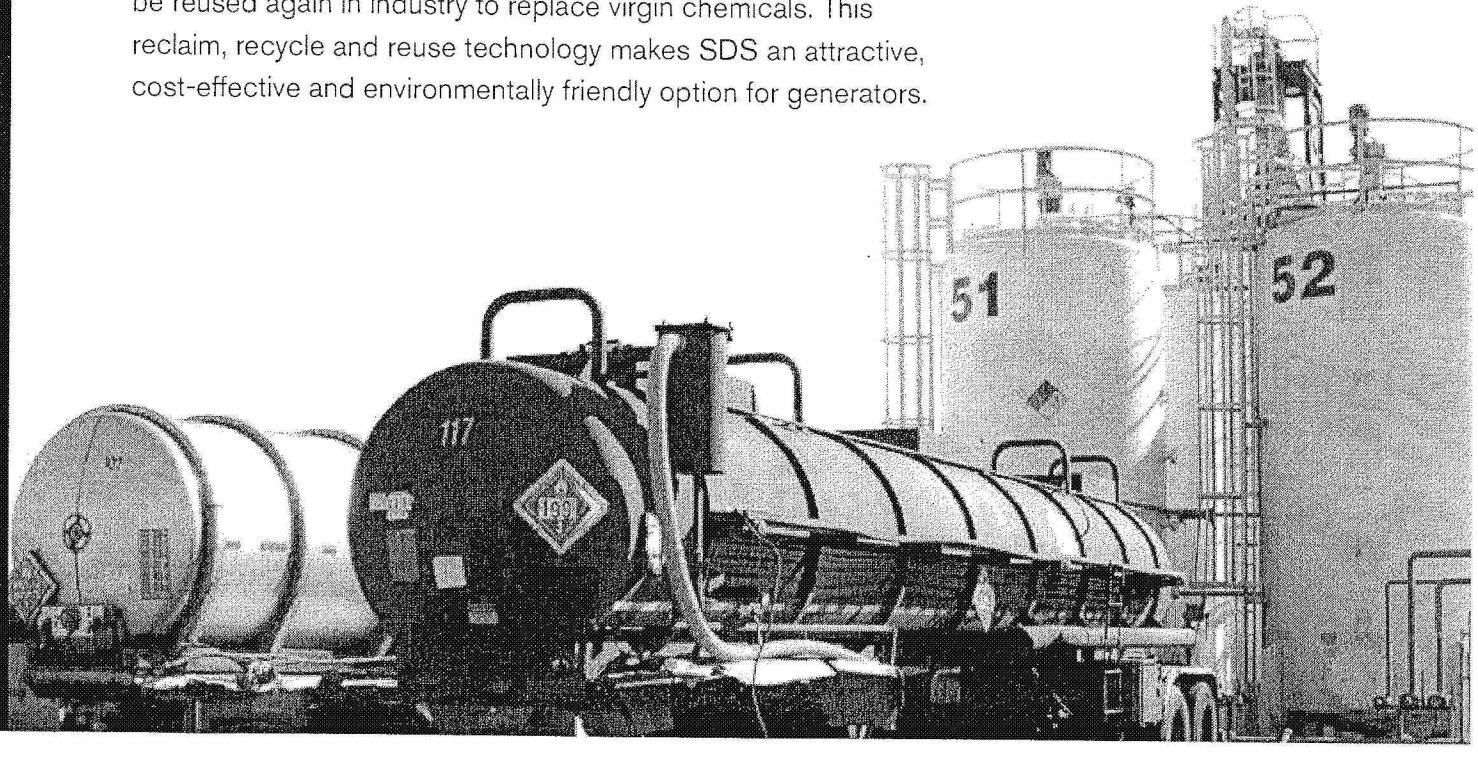
SUSTAINABLE WASTE MANAGEMENT

Tradebe's Solid Distillation System (SDS) is a positive step forward in waste recycling technology and a new, cost-effective way for generators to recycle their organic solid waste.

Before SDS, most solid waste was incinerated in a process designed to destroy its hazardous organic content by driving off volatiles and burning excess gases.

After incineration, residual materials were landfilled. Now, SDS offers a more responsible solution. Wastes such as paints, resins, polymers, solvent-soaked rags, and refinery wastes have their hazardous organic content removed and recycled so it can be reused again in industry to replace virgin chemicals. This reclaim, recycle and reuse technology makes SDS an attractive, cost-effective and environmentally friendly option for generators.

SDS is an attractive, cost-effective and environmentally friendly option for generators.



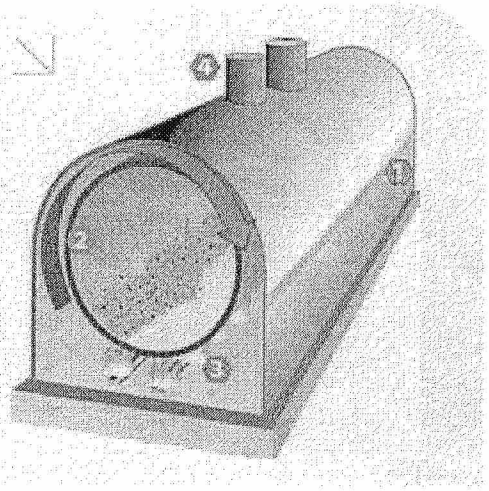
SDS IS UNIQUE FOR FOUR IMPORTANT REASONS.

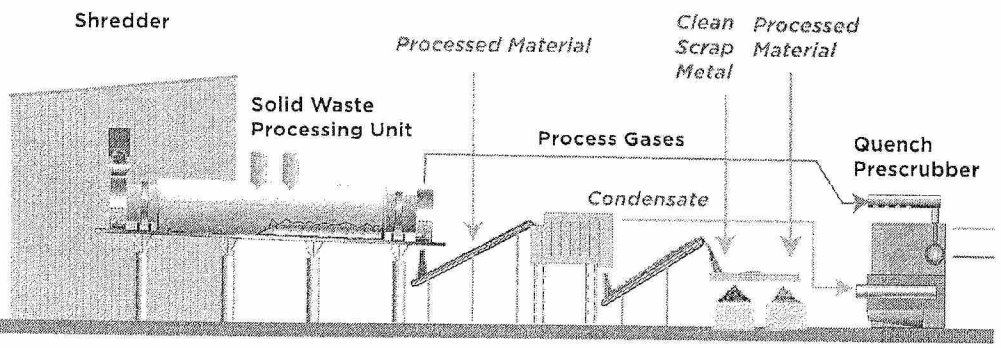
1. Processed material never touches the heat source.
2. Volatile and semi-volatile organics are "baked out" of the waste so they can be reclaimed, distilled and recycled.
3. Tradebe's SDS system is built to handle large volumes of solid waste and work continuously.
4. After processing, a portion of the residual material can be beneficially used in energy recovery.

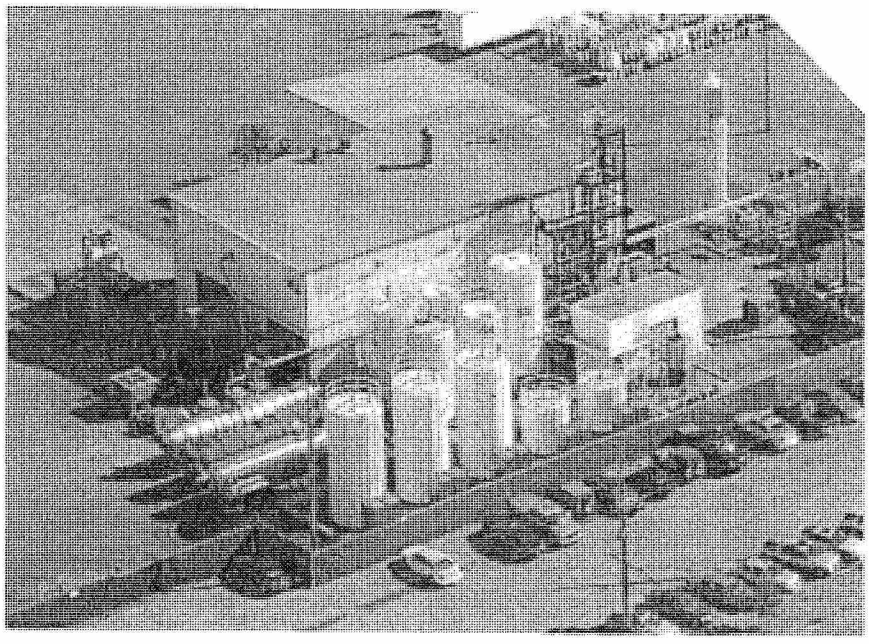
HOW IT WORKS AND WHY IT'S BETTER

THE SDS THERMAL PROCESSOR CONTAINS FOUR MAIN COMPONENTS.

1. *A thermal enclosure that surrounds the entire process*
2. *A rotating waste processing chamber located inside the thermal enclosure*
3. *An indirect heating system located under the rotating chamber*
4. *A heat exhaust system that reclaims and reuses process heat*







RESPONSIBLE MANAGEMENT, START TO FINISH

The waste typically arrives in metal drums. Tradebe chemists sample and profile each shipment to ensure compatibility with the SDS process.

Once accepted, the drums containing waste are processed through a powerful shredder that reduces everything to a uniform size. The shredded waste is fed into an entry valve at the top of the long, oven-like rotating process chamber. The anaerobic atmosphere inside the process chamber is designed to prevent the oxidation of hydrocarbon components as they are driven from the wastes.

As wastes tumble down the rotating cylinder, they are indirectly heated to very high temperatures; the heat is applied to the outside of the rotating chamber so the material on the inside is never exposed to direct flame.

The high internal temperatures drive all volatile and semi-volatile organic chemicals from the solids. The organic components are collected, condensed, and sent to an oil/water separator as a water/organic mixture to be processed.

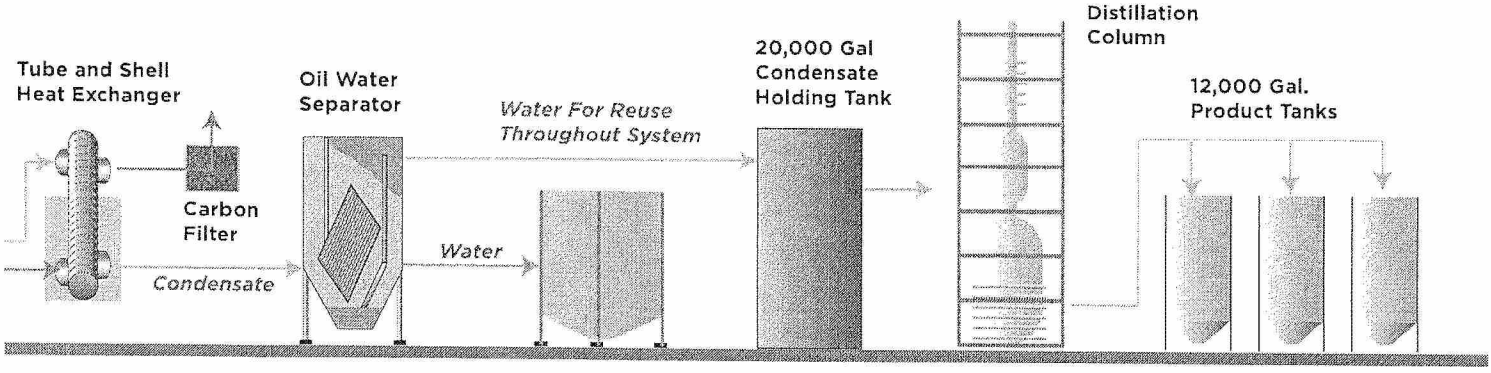
While SDS is a fully automated technology, skilled on-site personnel, working from a control center, monitor the process every step of the way to ensure a high quality end product. From the control terminal the operator can visually monitor and operate every key element in the process.

WHAT WASTES CAN BE PROCESSED?

Virtually any organic solid waste can be processed through SDS, including paint waste, solvent soaked rags, resins, polymers, production debris, refinery waste and discarded commercial products, and many more similar wastes.

Once waste is processed through SDS, the generator receives a Certificate of Recycling that affirms the waste has been recycled. The generator then has no further liability. The Certificate of Recycling is also beneficial for generators with ISO 14001 programs and Environmental Management System recycling goals.

Returning potentially hazardous chemicals to industry for reuse, rather than simply wasting their valuable organic content through incineration, is what Tradebe's responsible waste management program is all about. SDS technology achieves waste minimization and recycling goals by transforming waste into valuable recycled products.



SDS BENEFITS

- *SDS can effectively process virtually any solid organic hazardous waste.*
- *SDS helps generators meet Environmental Management Systems objectives.*
- *SDS prevents pollution while promoting recycling and reuse.*
- *SDS helps customers meet US EPA's RCRA Conservation Challenge.*
- *SDS eliminates the release of hazardous constituents into the atmosphere.*
- *SDS conserves energy while keeping waste out of the environment.*
- *SDS reclaims valuable constituents found in solid hazardous waste and reduces the demand for virgin chemicals.*

Solid Distillation System (SDS) is a positive step forward in waste recycling technology. SDS offers customers an effective and cost-efficient method for recycling organic solid waste that might otherwise be incinerated or landfilled. SDS extracts the organics from solid hazardous waste and transforms them into reusable products. SDS recycled products are being beneficially used now in numerous industries throughout the country in place of virgin chemicals.

SDS...
New technology for a new world of waste recycling.

Sustainability At Work

TRADEBE

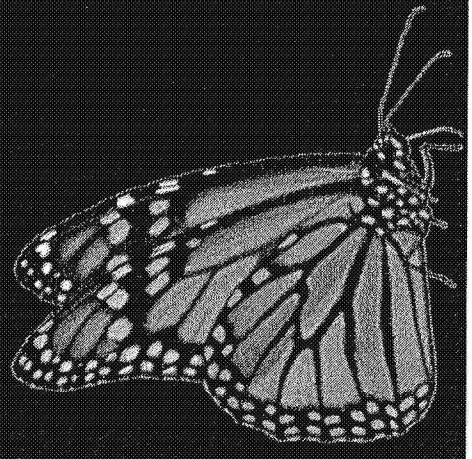
Tradebe Treatment & Recycling, LLC
A Division of Tradebe Environmental Services, LLC

4343 Kennedy Avenue
East Chicago, IN 46312

Toll Free Nationwide Customer Service:
(800) 388-7242

Northeast Customer Service and Emergency Response:
(888) 276-0887

www.tradebeusa.com



Attachment E

UNITED STATES ENVIRONMENTAL PROTECT.
REGION 6
1445 Ross Avenue
Dallas, Texas 75202-2733

2 MAY 2016

Mr. J.D. Head
Fritz, Byrne, Head & Fitzpatrick, PLLC
221 West 6th Street
Suite 960
Austin, Texas 78701

Dear Mr. Head:

Thank you for your October 30, 2015 letter requesting clarification of the hazardous waste regulatory standards for thermal desorption units (TDUs) installed at RCRA treatment, storage, and disposal facilities (TSDFs). I apologize for the delay in responding to your request. In your scenario, the TDU reclaims oil from oil bearing hazardous wastes generated by petroleum refining, production, or transportation practices. You describe a TDU as a device that heats solid material to vaporize, remove, and separate organic constituent materials from solids. In the scenario you describe at a TSDF, the separated organic constituents are typically condensed and recovered as a liquid oil. The TDU process also generates a vent gas after the condensing stream.

Your inquiry also references 40 C.F.R. § 261.6(a)(3)(iv)(C)[1], which provides that:

> Oil reclaimed from oil-bearing hazardous waste from petroleum refining, production, or transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the used oil specification under 40 C.F.R. § 279.11 is not subject to regulation under 40 C.F.R. Parts 262 – 268, 270, or 40 C.F.R. Part 124, and is not subject to the notification requirements of Section 3010 of RCRA.

If the above conditions are met, then the reclaimed oil can be burned as a non-hazardous fuel. If the oil-bearing hazardous waste is not from petroleum refining, production, or transportation practices, then the reclaimed oil is subject to RCRA regulation.

If a TDU combusts all or a portion of the vent gas, combustion of the TDU vent gas from RCRA hazardous waste or recyclable materials [40 C.F.R. § 261.6(a)(1)] is considered thermal treatment that is regulated by RCRA. The material being treated (oil-bearing hazardous waste) is already a hazardous waste. Heating hazardous wastes to a gaseous state is subject to regulation under RCRA as treatment of hazardous waste, and thermal treatment after a material becomes a hazardous waste is fully regulated under RCRA. 54 Fed. Reg. 50968, 50973 (December 11, 1989). Thus, thermal treatment of the vent gas requires a RCRA permit.

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[1] Since you did not reference a specific State in which your client may operate a TDU, this letter cites to the applicable federal regulations. If the State has an authorized RCRA program, the corresponding state regulation would be applicable.

If the vent gas is combusted in the combustion chamber of the TDU, then a permit under 40 C.F.R. Part 264, Subpart O is required, because the TDU would meet the definition of incinerator in 40 C.F.R. § 260.10 (an enclosed device that uses controlled flame combustion). If, on the other hand, the vent gas is vented to and combusted in a thermal oxidizing unit (TOU), the permitting authority may be able to permit the entire unit (TDU and TOU) as a miscellaneous unit under 40 C.F.R. Part 264, Subpart X. A RCRA permit would be required even if the facility is operating as a RCRA exempt recycling activity under 40 C.F.R. § 261.6(a)(3)(iv)(C). If the permitting authority decides to issue a 40 C.F.R. Part 264, Subpart X permit, the permitting authority is required to include in the permit requirements from 40 C.F.R. Part 264, Subparts I through O, AA, BB, and CC, 40 C.F.R. Part 270, 40 C.F.R. Part 63, Subpart EEE, and 40 C.F.R. Part 146 that are appropriate for the miscellaneous unit being permitted as required in 40 C.F.R. § 264.601. The decisions as to what appropriate requirements would be included in the permit would be left to the permitting authority. However, EPA would expect that the permit conditions would be similar to those set forth in the enclosed Consent Agreement and Final Order, In Re: US Ecology Texas, Inc. and TD*X Associates, LP, EPA Docket Nos. RCRA-06-2012-0936 and RCRA-06-2012-0937, filed October 4, 2012.

If you have any questions, please feel free to contact Guy Tidmore of my staff at (214) 665-3142 or via e-mail at tidmore.guy@epa.gov.

Sincerely,

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

Cc: Penny Wilson, ADEQ
Lourdes Iturralde, LDEQ
John Kieling, NMED
Mike Stickney, ODEQ
James Gradney, TCEQ

Consolidated Report to the AA
Office of Land and Emergency Management
Office of Resource Conservation and Recovery
for the Weeks of 9/12/16 – 9/23/16

Informational/No Action

Thermal Desorption Units

- (NEW) On September 8th, ORCR, Region 5 and OECA met with Phil Retallick (Clean Harbors) and David Case (ETC) to discuss thermal desorption units and applicable RCRA regulations.

CERCLA 108 b

- (NEW) On Sept 1st, ORCR released its Market Capacity study. The study assessed the capacity of third party markets to underwrite the financial responsibility instruments under consideration by EPA in the CERCLA 108(b) rulemaking for hardrock mining and mineral processing, and to report on the relationship of CERCLA 108(b) to financial responsibility programs of other federal agencies. It can be found at: https://www.epa.gov/superfund/cercla-108b-evaluation-markets-financial-responsibility-instruments-and-relationship

Pharmaceuticals

- (NEW) On September 8th, ORCR met with the U.S. Department of Transportation (DOT) and U.S. Department of Justice's Drug Enforcement Administration (DEA) to discuss the intersection of EPA regulations with their work and regulations related to take-back programs for pharmaceuticals.

Retail

- (NEW) On September 29th, ORCR will present its strategy for addressing the retail sector at the Retail Industry Leaders Association's Retail Sustainability and Environmental Compliance Conference at National Harbor, MD.

SMM

- (NEW) On September 13th, Nicole Villamizar of ORCR will present remotely (via conference call) at the Ecology and Environment's Coal Ash Beneficial Use Workshop, which is taking place in Albany, NY. Nicole will be providing a high-level overview of ORCR's available tools and assessments to support CCR beneficial use evaluations (including the recently released Beneficial Use Methodology and Compendium, and IWEM v. 3.1.) as well as the Built Environment Strategic Priority Area in the SMM Program's FY2017 – 2022 Strategic Plan.
- (NEW) On September 14th, the Co-Chairs for the National Strategy for Electronics Stewardship (NSES) - Barnes Johnson, Kevin Kampschroer (GSA) and Josh Silverman (DOE) - will be meeting with the Federal Chief Sustainability Officer, Christine Harada of CEQ. The purpose of this meeting is to update her on the NSES and to explain its purpose, its successes and its future.

Underground Transport Restoration (UTR) Project Events.

- (NEW) On September 14th, ORCR will participate in a workshop in New York City. The workshop intended to validate the Draft Guidance and Framework that has been developed specifically for NYCT, as part of a larger effort to assist subway systems in responding to a

biological release, thus enabling rapid return to service (RRS).This Draft Guidance and Framework is based on a template developed to optimize rapid return to service approaches for underground transportation systems. Additionally, participants will help to clarify understanding of the roles and responsibilities of the key responders and stakeholders; validate resources and current capabilities of the responders; and identify key questions, needs, concerns and decisions that will be used during an upcoming tabletop exercise (TTX). Project team members will present proposed strategies for sampling, decontamination, and waste management, and provide information to participants on key issues that will enhance RRS.

- (NEW) From September 19 to October 12th, ORCR will participate in an Operational Technology Demonstration (OTD) exercise for the UTR project. This OTD will take place at Fort AP Hill, VA, utilizing a simulated subway station and track, which is part of the asymmetric warfare center at the base. The OTD will be an exercise simulating a release of bacillus anthracis (anthrax) in a subway system, and the characterization, decontamination, and waste management resulting from such an incident. Two separate rounds of contamination will take place, in order to compare different decontamination strategies.
- (NEW) On September 27th, Barnes Johnson will attend a special VIP day to observe the OTD at Fort AP Hill, VA.

Speaking Engagements in the next 60 days

- On September 20-22nd, Barnes Johnson will speak at the EI Digest meeting in San Diego, California. Barnes will give two presentations, the first on RCRA's accomplishments and the second on addressing current issues in RCRA.
- On September 21st, ORCR will participate at E-Scrap Conference in New Orleans, Louisiana. Staff will moderate a session with manufacturers, recyclers, and academics on designing new electronics for better and easier reuse, recycling, longevity and durability.
- (NEW) On September 29th, Barnes Johnson will give a keynote at the Retail Industry Leaders Association's Retail Sustainability and Environmental Compliance Conference at National Harbor, MD.
- On September 29th, ORCR will participate in a panel focused on policies related to wasted food, with one session focused on diversion and the other on reduction strategies. The session, "Fighting Food Waste: Diversion and Recycling," is sponsored by the Environmental Law Institute and will take place in person at the ELI offices in Washington, D.C. and via webinar.
- On October 4-7th, Kathleen Salyer and staff will participate in the 2016 International E-waste Management Network (IEMN) annual workshop. The workshop will take place in Kuala Lumpur, Malaysia and focuses on building e-waste management infrastructure in developing countries.
- On October 7th, Cheryl Coleman will present on EPA's LCA work in Kyoto, Japan.
- On October 25th, ORCR staff will lead a discussion at the Electronics Reuse Conference in Houston, Texas, about designing for reuse and refurbishment – successes, issues and challenges.

Public Announcements in the next 60 days

- (NEW) A report providing EPA's perspective on the discussions that occurred at the G7 Alliance for Resource Efficiency's March 2016 U.S.-hosted Workshop on Supply Chain Management will be circulated to workshop participants in late September. This document will be made available to the public and posted on the SMM program's website soon thereafter.
- In early October, ORCR plans to release the *Recycling Economic Information (REI) Study Update,* which updates the first analysis of the economic benefits of recycling and jobs created in

recycling released 20 years ago. The 2016 study will include an updated definition of recycling, new estimates of numbers of jobs, wages and tax revenues created by recycling, and a refined analytical methodology.

- In October, ORCR expects to publish the *Advancing Sustainable Materials Management: Facts and Figures 2014*. The 2014 report will include data on municipal solid waste (MSW) generation, recycling, and disposal in the United States in 2014 as well as information on waste prevention, historical tipping fees, and construction and demolition debris generation.
- In Fall 2016, ORCR plans to release the final *Guidelines for Evaluating the Post-Closure Care Period for Hazardous Waste Disposal Facilities under Subtitle C of RCRA* (Post-Closure Care Guidance). This guidance recommends criteria for consideration in assuring that human health and the environment will be adequately protected in making decisions to extend, shorten, or end the post-closure care period for hazardous waste disposal facilities subject to Subtitle C of RCRA. The guidance has the additional benefit of helping regulated entities understand the factors that can affect the length of the post-closure care period and the costs associated with land disposal so they can better evaluate long-term waste management strategies, including waste minimization.

be addressed under the SIP process or potentially by a RCRA permit writer using the omnibus permitting authority.

In developing today's proposed rule, a number of people representing a wide range of interests (e.g., industry representatives, environmentalists) have indicated, however, that the rule may be simpler to implement and more protective if the controls were technology-based. They advocate using risk assessment only as a check to determine if the standards are protective on a site-specific basis. They cite the current limitations of risk-based standards in this particular situation, including: (1) indirect exposure (e.g., uptake through the food chain) has not been considered for carcinogens; (2) metals controls are proposed only for those metals for which sufficient health effects data exist to establish acceptable ambient levels; and (3) the metals controls are difficult to implement by limiting feed rates of individual metals given the physical matrices of wastes and the variability of metals concentrations. We agree with these concerns and are initiating a testing program to develop technology-based controls for particulate matter to provide a measure of control for particulates, including metal particulates and adsorbed organic compounds, commensurate with best demonstrated technology (BDT) for hazardous waste incinerators. See RCRA section 3004(a)(1)—section 3004 standards are to be revised periodically to take into account improvements of measurement and technology. If EPA establishes a BDT particulate standard, the risk-based controls for metals emissions would still apply and would then be used as a check to determine if the BDT standard provides adequate protection on a case-by-case basis. Given the limitations of current risk assessment methodologies, we do not believe that it could be demonstrated that a BDT standard substantially over-regulates in many situations.

We are not proposing at this time to lower the existing particulate standard because we have not conducted adequate field testing of hazardous waste incinerators to establish a BDT particulate standard.[12] Further, once the BDT standard is identified, we would then need to consider the impact on the regulated community of applying the standard to establish a reasonable compliance schedule.

II. Definitions of Incinerators and Industrial Furnaces

We discuss below the basis for proposing to revise the definitions of incinerator and industrial furnace, the regulatory status for sludge dryers, and a request for comment on regulating all hazardous waste thermal treatment devices under parts 264 and 265, subpart O.

A. Definition of Incinerator and Industrial Furnace

Existing definitions in § 260.10 for incinerators and industrial furnaces consider how thermal energy is provided to the device. Both definitions stipulate that the device must utilize controlled flame combustion, thus excluding devices using other means to supply the heat necessary to combust or otherwise themally treat waste. Thus, for example, electric arc smelters are not industrial furnaces and devices using infrared heat to destroy waste are not incinerators. Significant regulatory consequences result from these determinations. Electric arc smelters that reclaim nonindigenous metal hydroxide sludges are not industrial furnaces, and, thus, are exempt from regulation under § 261.6(c)(1), while smelters using direct flame combustion to reclaim the same sludge would be regulated under the May 6, 1987, proposed rules for boilers and industrial furnaces. Infrared devices used to destroy waste would be regulated under the subpart X permit standards of part 264 and the subpart P interim status standards of part 265, while controlled flame incinerators would be regulated under subpart O of parts 264 and 265 (and any amendments resulting from today's proposal). The subpart X permit standards under part 264 are not prescriptive; permit writers use engineering judgment and risk analysis to determine appropriate permit conditions.

We believe that incinerators and industrial furnaces pose much the same risk irrespective of whether they use controlled flame combustion or some other means to provide heat energy. Therefore, we are proposing to replace or temper the reference to controlled flame combustion in respective definitions.

1. *Revised definition of industrial furnace.* We are proposing to revise the definition of industrial furnace to refer to thermal treatment rather than to controlled flame combustion. We believe that there are very few additional industrial furnaces (that process nonindigenous waste) that would be regulated under this expanded definition, and it makes no sense to regulate these few furnaces differently than other industrial furnaces processing the same materials. EPA specifically requests comments on the need for the revised industrial furnace definition and resulant impacts on the regulated community.

2. *Plasma arc and infrared devices are incinertors.* We are proposing to revise the definition of incinerator to include explicitly two nonflame combustion devices: plasma arc and infrared incinerators. Although these devices are sometimes considered to be nonflame devices rather than incinerators, we believe that they should be regulated as Subpart O incinerators for two reasons. First, they invariably employ afterburners to combust hydrocarbons driven off by the plasma arc or infrared process. Thus, it can be argued that these units, in fact, meet the current definition of an incinerator. Second, we believe that the Subpart O incinerator standards can be appropriately applied to these devices; the technical requirements of subpart O are appropriate to address the hazards posed by these devices. We also note that applying the Subpart O standards will reduce the burden on both permit writers and applicants. The Subpart X standards are nonprescriptive standards under which permit writers apply permit conditions as appropriate to protect human health and the environment. Thus, under subpart X, permit writers would need to determine on a case-by-case basis whether particular provisions of subpart O are appropriate and whether additional permit conditions would be needed. Using Subpart O strandards removes the ambiguity for both permit writers and applicants over what requirements are necessary.

Today's proposed amendments to the incinerator standards likewise appear suitable for plasma arc and infrared incinerators. We request comment on whether there are other "nonflame" combustion devices for which the Subpart O incinerator standards are applicable (i.e., devices that use an afterburner to combust hydrocarbons generated from hazardous waste by a nonflame process).

We note that we are proposing only to change (or clarify) the regulatory status of these two classes of devices, not to subject them to regulation for the first time. Thus, interim status is not being reopened for these devices. They have

[12] We note that several States control hazardous waste incinerator particulate emissions to levels well below EPA's standard of 0.08 gr/dscf. In addition, several hazardous waste incinerators have been demonstrated to be capable of routinely controlling particulate emissions to levels in the 0.01–0.02 gr/dscf range, or less. Further, as discussed above in the text, the proposed particulate standard for MWCs is 0.015 gr/dscf. Thus, we anticipate that a BDT particulate standard for hazardous waste incinerators would be within that range of 0.01 to 0.02 gr/dscf.

been regulated since 1980 under subpart P (interim status standards for thermal treatment units), subpart X (permit standards for other treatment units), or subpart O (interim status and permit standards for incinerators). We note that the interim status standards of part 265, subpart P, are virtually identical to the interim status standards of part 265, subpart O.

3. *Fluidized bed devices are incinerators.* EPA would also like to clarify that fluidized bed devices are incinerators and are regulated under subpart O. They are not subject to the thermal treatment standards of part 265, subpart P, or requirements established under part 264, subpart X. Fluidized bed incinerators are enclosed devices that are designed to provide contact between a heated inert bed material fluidized with air and the solid waste. Gas is passed upwards through a column of fine particulates at a sufficient velocity to cause the solids/gas mixture to behave like a liquid. The bed is preheated by overfired or underfired auxiliary fuel. It is generally accepted that fluidized beds meet the definition of incinerator, although there may have been some confusion in the past. Although we are clarifying that they do meet the definition of incincerator, we specifically request comment on whether there is sufficient ambiguity to warrant adding fluidized bed devices to the definition of incinerator.

4. *Revised regulatory status of carbon regeneration units.* We are also proposing to revise the regulatory status of carbon regeneration units. Controlled flame carbon regeneration units currently meet the definition of incinerator and have been subject to regulation as such since 1980,[13] while carbon regeneration nonflame units have been treated as exempt reclamation units. We are proposing to regulate both direct flame and nonflame carbon regeneration units as thermal treatment units under the interim status standards of part 265, subpart P, and the permit standards of part 264, subpart X. Our reason for doing this is that we are concerned that emissions from these devices may present a substantial hazard to human health or the environment. We are not proposing to apply the part 264, subpart O, incinerator standards to these units because we are concerned that demonstration of conformance with the DRE standards (and the proposed CO/THC standards) may not be achievable considering the relatively low levels of toxic organic compounds absorbed onto the activated carbon.

The prevailing view appears to be that carbon regeneration units currently are exempt recycling units. We have considered whether or not these units truly are engaged in reclamation, or whether the regeneration of the carbon is just the concluding aspect of the waste treatment process that commenced with the use of activated carbon to absorb waste contaminants, which are now destroyed in the "regeneration" process.[14] Irrespective of whether these units are better classified as waste treatment or recycling units (or whether the units are flame or nonflame devices), we are concerned, as indicated above, that emissions from the regeneration process can pose a serious hazard to public health if not properly controlled. Consequently, nonflame units in existence on the date of promulgation (like flame units) would be subject to part 265, subpart P, and new units would be subject to part 264, subpart X.

We note that we intend for this proposal to also apply to those carbon regeneration units that meet the definition of wastewater treatment units in § 260.10 while they are in active service. These units would not be exempt from regulation when they are being regenerated because they are no longer treating wastewater. Rather, the activated carbon columns themselves are being treated thermally.

B. Regulation of All Thermal Treatment Units Under Subpart O

The Agency has done some preliminary thinking on an alternative approach to regulating combustion devices—the regulation of all thermal treatment devices under virtually identical standards under subpart O. This would avoid a number of problems with the current regulatory approach, including: (1) Ambiguous definitions for boilers and industrial furnaces; (2) incomplete coverage of the incinerator and industrial furnace definitions (e.g., although today's proposal would expand regulatory coverage of industrial furances to include heating by means other than controlled flame combustion, furances other than those that are "integral components of a manufacturing process" (see § 260.10), such as off-site facilities engaged solely in waste management, could be engaged in *bona fide* reclamation and should be classified as an industrial furnace rather than an incinerator); (3) the burden on the regulated community and EPA and State officials to process petitions to classify individual devices as boilers or industrial furnaces rather than incinerators; and (4) the numerous provisions in the proposed boiler and furnace rules that would merely parrot the current and proposed incinerator standards.

Under this alternative approach, all thermal treatment devices would be regulated under the same risk-based standards to control metals and HCl emissions—the standards proposed today for incinerators.[15] Control of organic emissions could also be the same as those CO controls proposed today for incinerators coupled with the existing DRE standards for incinerators. Devices handling wastes with low levels of toxic organic constituents (e.g., smelters, sludge dryers, certain incinerators), however, would not be subject to organic emissions controls. The applicability of standards could, in many cases, be a function of waste properties and composition. It may not be necessary to identify applicability by type of device.

EPA is continuing to consider this alternative. In particular, we are investigating whether the temporary exclusion for the special wastes in RCRA section 3001(b)(3) and the special standards and exemptions proposed for boilers and industrial furnaces can be implemented without definitions for these devices. We specifically request comments on this alternative regulatory approach whereby all thermal treatment units could be regulated under one set of standards under subpart O.

PART THREE: DISCUSSION OF PROPOSED CONTROLS

I. Overview of EPA's Risk Assessment

In developing this regulation, the Agency has used risk assessment to: (1) determine that absent regulatory

[13] There appears to be confusion as to the current regulatory status of direct flame activated carbon regeneration units. Because EPA indicated in the May 19, 1980, preamble that all activated carbon regeneration units were engaged in a form of recycling presently exempt from regulation (45 FR 33094), EPA is proposing in this notice to amend the regulations to control these devices, both direct and indirect fired. Consequently, the "in existence" date for all activated carbon regeneration units would be the date of promulgation of final regulations.

[14] We note that activated carbon units used as air emissions control devices frequently regenerate the carbon in place by steam stripping, condensing the organic contaminants for reuse. The trapped organics in such columns are not hazardous wastes because the gas originally being treated is not a solid waste (it is an uncontained gas), and therefore any condensed organics do not derive from treatment of a listed hazardous waste.

[15] We note that EPA is requesting comment on applying these controls (as well as the proposed CO controls) to boilers and industrial furnaces as well in lieu of those proposed on May 6, 1987. See the Federal Register notice published today entitled, "Burning of Hazardous Waste in Boilers and Industrial Furnaces: Supplement to Proposed Rule."

Message

From: Radtke, Meghan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7A364F0FAAD54A79BE238288FA3496CF-RADTKE, MEGHAN]
Sent: 1/23/2017 9:18:16 PM
To: Galbraith, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0abf7f5c1a5e462e8096cb58ef9757eb-MGALBRAI]; Huggins, Richard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0314e81a1f4843fcbbe0910cfddd53f4-Huggins, Richard]
CC: Sasseville, Sonya [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9302bd775fa84bebbbe0c430316f76c6-SSASSEVI]; Guernica, Mimi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c8a7d898ed74b678830c17ee521a045-MGUERNIC]; Elliott, Ross [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33cb08013cc94c21a3e3236dbad4c4a4-REELLIOT]; Atagi, Tracy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ebcfd670077440dfb63a691749f20af2-TATAGI]; Kohler, Amanda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=665a6cdd3371457fb03d5184f58f7a4a-Kohler, Amanda]; Young, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=26404c78d3dc441f810ac723cf8f9d49-JBIEGELS]; Behan, Frank [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b37b3a6d67644ad3bf5717d99610941e-FBEHAN]
Subject: RE: update on Tradebe

Hi,

Just letting you all know that Barnes will actually be meeting with David Case tomorrow and Tradebe is one of the topics for discussion. Ross suggested that Tracy and Michael be added to the meeting invitation. So, I will do that in a minute.

The meeting will also cover a couple of other topics – Basel Convention and a Turkish delegation visit to Region 5.

We plan to start the Tradebe discussion around 2:15 pm (we'll call Region 5 then), so Michael and Tracy can join us then. If anyone else should be included at the meeting, please let me/Richard know.

Thanks!

Meghan

Meghan Radtke, Ph.D., Biologist
Special Assistant
Office of Resource Conservation and Recovery
Office of Land and Emergency Management
U.S. Environmental Protection Agency
Desk phone: 703-347-0229
Mobile: 703-472-8215

From: Galbraith, Michael
Sent: Monday, January 23, 2017 3:38 PM
To: Radtke, Meghan <Radtke.Meghan@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>
Cc: Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Guernica, Mimi <Guernica.Mimi@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>; Atagi, Tracy <Atagi.Tracy@epa.gov>; Kohler, Amanda <Kohler.Amanda@epa.gov>; Young, Jessica <Young.Jessica@epa.gov>; Behan, Frank <Behan.Frank@epa.gov>
Subject: update on Tradebe

I heard Barnes may want an update on Tradebe since ETC is having a member meeting this week.

Attached is a one-pager I did today. I also attached a 2 pager sasha did for barnes last year (that I referenced).

Let me know if Barnes needs anything else.

Thanks!

Mike Galbraith
Permits Branch (5303P)
Program Implementation/Information Division
Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

9441.1995(18)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

May 25, 1995

Mr. William A. Spratlin, Director
Air, RCRA, and Toxics Division
EPA Region VII
726 Minnesota Avenue
Kansas City, KS 66101

Dear Mr. Spratlin:

This is in response to your April 6, 1995 letter regarding the regulatory status of a gasification unit that Texaco proposes to build at its El Dorado, Kansas petroleum refining facility. We have decided to support your decision to concur with the Kansas Department of Health and Environment's proposed approval of a permit exemption for the facility. Our decision is related to the facts specific to this particular situation and should not be viewed as a determination that all gasification units are exempt from RCRA permitting requirements. The remainder of this letter is devoted to a discussion of the rationale for our position regarding the El Dorado facility.

Based upon our consultations with your office and with the state of Kansas and upon our April 12th meeting with representatives from Texaco (several of whom came in to meet with us the day after your letter arrived), OSW identified a need to clarify the regulatory status of the gasification unit that Texaco proposes to bring on-line at its El Dorado, Kansas petroleum refining facility. These clarifications focus on the three principal components of the gasification process, as proposed for this facility: (1) the regulatory status of the "syngas" created by the gasifier, (2) the status of the unit itself and (3) the use of RCRA-listed hazardous wastes as feedstocks for the gasifier.

The "Syngas"

The syngas produced by the gasifier in El Dorado would be exempt from RCRA regulation according to the provisions of 40 CFR §261.6(a)(3)(iv), which exempts "fuels produced from the refining

of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices." Of course any residuals from the gasification process would need to be evaluated under 40 CFR §261 in order to determine whether or not they are subject to regulation as hazardous waste under RCRA.

The Gasification Unit

The unit that Texaco proposes to construct in El Dorado would also be exempt from regulation. In our judgement the gasifier would be an exempt recycling unit as provided for under 40 CFR §261.6(c)(1). Based on our analysis, the gasifier proposed for use at the El Dorado facility does not meet the definition of an incinerator, a boiler or industrial furnace, as defined in 40 CFR §260.10. Therefore, this unit would not be subject to the incinerator standards set forth in 40 CFR 264, Subpart O or the BIF standards set forth in 40 CFR 266, Subpart H.

The Feedstock

Based on your presentation, the feedstock to be used in the unit would include petroleum coke, other hydrocarbon streams and a number of RCRA-listed hazardous wastes, including: API separator sludge (KO51), acid soluble oils (DOO1 an DO18), primary sludges (FO37) and phenolic residue (KO22). Should the El Dorado store these materials on site for a period of greater than 90 days, the facility would be required to obtain a RCRA storage permit. If the materials are not stored at the facility for longer than 90 days, a storage permit would not be required, as provided for under 40 CFR §262.34.

If you have any further questions or require additional information, please contact Stephen Bergman of my staff at (202) 260-5944.

Sincerely,

Michael Shapiro, Director
Office of Solid Waste

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. Parker E. Brugge
Patton Boggs, L.L.P.
2550 M Street, N. W.
Washington, D.C. 20037-1350

Dear Mr. Brugge:

This letter is in response to your April 7, 1998, letter seeking clarification on the distinction between thermal desorbers and incinerators. Under the U.S. Environmental Protection Agency (EPA) Resource Conservation and Recovery Act (RCRA) regulations (40 CFR 260.10), thermal treatment units that are enclosed devices using controlled flame combustion, and that are neither boilers nor industrial furnaces, are classified as incinerators subject to regulation under 40 CFR Part 264, Subpart 0. Thermal treatment units that do not use controlled flame combustion, and that are neither boilers nor industrial furnaces, are classified as "miscellaneous units" subject to regulation under 40 CFR Part 264, Subpart X.

EPA regulations do not define "thermal desorber", but the term generally applies to a unit that treats waste thermally to extract the contaminants from the matrix. A thermal desorber utilizing controlled flame combustion (e.g., equipped with a directly fired desorption chamber and/or a fired afterburner to destroy organics) would meet the regulatory definition of an incinerator. On the other hand, a thermal desorber that did not use controlled flame combustion (e.g., equipped with an indirectly heated desorption chamber and the desorbed organics were not "controlled"/destroyed with an afterburner) would be classified as a "miscellaneous unit".

With regard to the September 1993 Presumptive Remedy guidance entitled: `Presumptive Remedies: Site Characterization and Technology Selection for CERCLA Sites with Volatile Organic Compounds in Soils" (Directive Number 9355.0-48FS) that you mentioned, EPA identified thermal &sorption and incineration as the second and third preferred technologies, respectively. The intent of the guidance is that units that can be generally described as thermal desorbers, whether or not they are also incinerators, are second in the preference list. However, if a thermal desorber that meets the RCRA definition of incinerator is used to treat hazardous waste at a CERCLA site, the unit must meet RCRA's incinerator standards, EPA developed the preferential order set out in this guidance based on historical patterns of remedy selection and EPA's

scientific and engineering evaluation of performance data on technology implementation. There was no intent implied or stated in the Presumptive Remedy guidance that the preferential order was based on the temperature of operation; the guidance does not limit the thermal desorbers technologies to those that are low-temperature thermal desorbers.

We appreciate that as technologies evolve, the distinctions between units often become blurred, and, in the case of thermal desorbers, may fail within two separate classifications depending on the design of the unit. Classification of a "thermal treatment" unit, however, is defined by 40 CFR 260.10.

Both the RCRA regulatory framework and the CERCLA remedy selection process provide adequate flexibility to ensure that the unit is operated in a protective manner and that there is adequate and informed public participation. If you have any further questions, please contact either Andrew O'Palko, Office of Solid Waste, at (703) 308-8646 or Robin Anderson, Office of Emergency and Remedial Response, at (703) 603-8747.

Sincerely,

Elizabeth Cotsworth
Acting Director
Office of Solid Waste

Sincerely,

Stephen D. Luftig
Director
Office of Emergency and
Remedial Response

cc: Andrew O'Palko, OSW
Bob Holloway, OSW
Robin Anderson, OERR
Karen Kraus, OGC
Superfund Regional Response Managers
RCRA Senior Policy Advisors

PATTON BOGGS, L.L.P.

2550 M STREET. N.W.
WASHINGTON. D.C. 20037-1350
(202) 457-6000 (202) 457-5225

April 2, 1998

Ms. Elizabeth A. Cotsworth
Acting Director
Office of Solid Waste
U.S. Environmental Protection Agency
401 M Street, S.W. (5301W)
Washington, D.C. 20460

Dear Ms. Cotsworth:

I am writing to seek clarification on the distinction between thermal desorbers and incinerators.

It is my understanding that thermal treatment units which are enclosed devices using controlled flame combustion, and that are neither boilers nor industrial furnaces, are classified as incinerators subject to regulation under 40 CFR Part 264, Subpart O. It is also my understanding that thermal treatment units which do not use controlled flame combustion, and that are not industrial furnaces, are classified as "miscellaneous units" subject to regulation under 40 CFR Part 264, Subpart X.

Thus, a thermal desorber is subject to regulation as an incinerator if it is equipped with a fired afterburner, or if the desorption chamber is directly fired. However, I would assume that, although such a device is subject to regulation under Subpart O, it nevertheless remains a "thermal desorber." The fact that it must meet the standards set forth in Subpart O for incinerators does not transform it somehow into an incinerator for CERCLA purposes.

For example, EPA issued guidance in September 1993 explaining that at a Superfund site which has soil contaminated with volatile organic compounds, the range of remedial technologies set forth in a Record of Decision may be soil-vapor extraction ("SVE"), low-temperature thermal desorption ("LTTD"), and incineration. The preferred order is SVE, LTTD, and, as a last resort, incineration. A thermal desorber with a fired afterburner, or one whose desorption chamber is directly fired, must fall within the "thermal desorption" family of technologies, even though it would be subject to regulation under Subpart O as an incinerator.

To hold otherwise would disqualify the large majority of LTTD units, which are directly fired and use afterburners for air pollution control. This result would be contrary to EPA's CERCLA guidance and to the Administrator's emphasis on reducing incineration which involves the high-temperature burning of contaminated soil.

There appears to be some confusion on this issue, for which we would appreciate your help in clarifying. Please call me if you have any questions or if you would like to discuss this issue further.

Sincerely,

Parker E. Brugge

cc: Bob Holloway

9489.1994(01)

CLARIFICATION ON THE DISTINCTION BETWEEN THERMAL DESORBERS AND INCINERATORS

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

February 23, 1994

Mr. David D. Emery
President
Bioremediation Service, Inc.
P.O. Box 2010
Lake Oswego, Oregon 97035-0012

Dear Mr. Emery:

This is in response to your December 21, 1993, letter requesting clarification on the distinction between thermal desorbers and incinerators. In particular, you questioned whether temperature was a criterion for distinguishing between desorbers and incinerators and whether chlordane contaminated soil can be effectively and safely treated by thermal desorption.

Under the Environmental Protection Agency's (EPA's) regulations, thermal treatment units that are enclosed devices using controlled flame combustion and that are neither boilers nor industrial furnaces are classified as incinerators subject to regulation under 40 CFR Part 264, Subpart O. Definitions of boilers, industrial furnaces, and incinerators are established in 40 CFR 260.10. Thermal treatment units that do not use controlled flame combustion and that are not industrial furnaces are classified as "miscellaneous units" subject to regulation under 40 CFR Part 264, Subpart X.

The use of "controlled flame combustion" determines whether EPA regulates a device used for thermal desorption as an incinerator or a "miscellaneous unit". Consequently, a thermal desorber would be subject to regulation as an incinerator if it was equipped with a fired afterburner to destroy desorbed organic compounds, or if the desorption chamber was directly fired, irrespective of how the desorbed organics were controlled. On the other hand, if the desorption chamber was indirectly heated and the desorbed organics were not controlled using controlled flame combustion (e.g., no afterburner), the thermal desorber would be subject to regulation as a "miscellaneous unit". Thus, in response

to your questions, temperature is not a criterion that is used to determine the regulatory status of a thermal desorber.

EPA's regulations for miscellaneous units are not prescriptive given the variety of devices that fall into this category. Rather, the regulations require the permitting official to establish permit conditions that are necessary to protect human health and the environment. For "miscellaneous" thermal treatment units, permit writers will generally require compliance with all of the Subpart O incinerator standards that are appropriate for the technology and then determine if additional controls are needed to ensure that emissions are safe.

Please note that I have described EPA's regulatory classification approach for thermal desorbers. Under the Resource Conservation and Recovery Act, EPA authorizes the States to implement the hazardous waste management regulatory program. State regulations may be more stringent or broader in scope than EPA's. Therefore, you should check with the State in which the facility in question is to be located to identify any applicable standards.

With respect to your question as to whether chlordane contaminated soil can be effectively and safely treated by low temperature desorption, you should contact EPA's technical expert on thermal desorption, Paul de Percin, Office of Research and Development, for assistance. Mr. de Percin can also be consulted about TCDD conjugation but, without full thermodynamic and kinetic data regarding the process involved, it may be difficult to give you any definitive assistance. He can be reached at 513-569-7797.

I hope that this information will be helpful. If you have further questions about the regulatory classification of thermal desorbers, please contact Bob Holloway of my staff at 703-308-8461.

Sincerely,
Michael Shapiro
Director
Office of Solid Waste

cc: Paul de Percin; Bob Holloway

9431.1994(02)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

APPLICABILITY OF RCRA REGULATIONS TO A PROPOSED FUMING/ GASIFICATION UNIT

November 15, 1994

MEMORANDUM

SUBJECT: Exide Corporation's Proposed Fuming/Gasification Unit

FROM: Michael, Shapiro, Director
Office of Solid Waste (5301)

TO: Marcia Parisi Vickers
Associate Division Director
Office of RCRA Programs, Region III (3HW03)

This is in response to your September 29, 1993, memo requesting a Headquarters' determination as to whether the RCRA regulations apply to a fuming/gasification unit that Exide Corporation proposes to build adjacent to its existing lead smelting facility near Reading, Pennsylvania. In particular, you ask if the device would be subject to RCRA regulations, and, if so, would it be classified as an incinerator, industrial furnace, or miscellaneous treatment unit (i.e., Subpart X unit). Further, you asked, if the device is considered to be a Subpart X unit, how would the permitting priorities established under the Combustion Strategy relate to the Exide facility? The remainder of this memo provides some basic information that needs to be considered in making a decision and then provides our response to your questions.

Description of the Process. As we understand, the fuming/gasification device would use a plasma arc to process lead-contaminated soil and soil mixed with spent battery casings. Lead and organic compounds would be vaporized in the device and exhausted to the afterburner section of an existing reverberatory furnace. The reverberatory furnace and its afterburner is used for secondary lead smelting and would qualify for the metals

recovery exemption under the Boiler and Industrial Furnace (BIF) rule. The afterburner would serve to destroy the organics in the exhaust from the plasma arc device and the lead would be captured (i.e., by condensation onto particulates and gas cleaning for particulate matter) and returned as feed to the reverberatory furnace for processing into salable product. The inorganic soil fractions that do not vaporize would be tapped off as slag.

Classification of Devices vs Process Trains. Given that the off-gas from the plasma arc device would be vented to an existing secondary lead smelter, previous guidance would require that we evaluate the classification of the new device -- that is, the fuming/gasification unit -- for determinations such as interim status eligibility, when applicable. For determining what regulatory standards and permit conditions should be applied, we would look at the process train in which the device would be incorporated (i.e., the plasma arc, secondary lead smelter, and afterburner). This guidance describes how the regulations apply to combustion devices at a facility where: (1) more than one device type (e.g., incinerator, industrial furnace, Subpart X unit) is connected in a process train: (2) the emissions from the connected devices emanate from a single stack; and (3) each device is separately burning or processing hazardous waste. See my July 29, 1994, memorandum to Allyn Davis (copy attached).

As discussed in that memo, a case-by-case determination needs to be made to identify the standards, and permit conditions that should apply to the process train in its entirety. For purposes of making interim status determinations, the classification of the individual device must be determined separately. Since there is no issue with respect to the eligibility of the new device to qualify for interim status, that evaluation need not be made and is not discussed further in this memo.

Evaluation of the Process Train. The process train would be comprised of the existing reverberatory furnace with its afterburner and the new plasma arc device that is also connected to the afterburner. The question is whether the new plasma arc device would affect the regulatory standards and permit conditions applicable to the process train. In this particular case, we believe the first step is to look at how we would classify the plasma arc/afterburner portion of the process train if it were a separate unit. If it would not be classified as an

industrial furnace, we then need to determine what regulations are applicable to a process train comprised of an industrial furnace and some other device (i.e., the plasma arc/afterburner).

Given that the plasma arc device would be vented to an afterburner that uses controlled flame combustion, that portion of the process train would meet the definition of an incinerator, industrial furnace, or theoretically, a boiler, as those devices are defined in 260.10. Thus, this part of the process train would not be classified or regulated under Subpart X, Part 264, if it were a separate unit. Further, this portion of the process train would not be classified as a boiler because energy is not recovered and exported. Consequently, this portion of the process train would be classified as either an incinerator or industrial furnace depending on how it would be operated.

We have previously determined that a retorter is a type of pyrometallurgical device that meets the definition of smelting, melting, or refining furnace. See my December 17, 1993, memorandum to Joseph Franzmathes (copy attached). In the metallurgical industry, a retorter is a furnace consisting of a fire chamber in which metals are recovered by vaporization and subsequent condensation. The plasma arc/afterburner portion of the process train would meet the definition of a retorter if: (1) wastes or materials fed into the device contained economically recoverable levels of lead (see 56 FR 7143 (Feb. 21, 1991)); (2) Exide is in the business of producing lead for public sale, whether to an ultimate user or for further reprocessing or manufacture (see generally, 260.10 (definition of industrial furnace); see also EPA Region VI, Statement of Basis for Denial of Permit Application by Marine Shale Processors, Inc., Sept. 15, 1994, p. 6 (devices on enumerated list of industrial furnaces must still be operating as an integral component of a manufacturing process to be an industrial furnace)), and (3) significant levels of lead are recovered. If any of these criteria are not met, this portion of the process train would meet the definition of incinerator.

If it is determined that the plasma arc/afterburner portion of the process train would be an industrial furnace and if it were a separate unit, then the entire process train (i.e., including the secondary lead smelter) would be regulated as an industrial furnace. The emission standards and exemptions for industrial furnaces would apply. If the plasma arc/afterburner

portion of the process train is determined to meet the definition of an incinerator, however, then the evaluation of what regulations would apply is more complex.

Would the Process Train Be Subject to RCRA Regulation? If the plasma arc/afterburner portion of the process train meets the above criteria, then the entire process train would be classified as a smelting, melting, or refining industrial furnace. In this case, even though 260.10 defines a plasma arc incinerator as "any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace," the plasma arc/afterburner portion of the process train would meet the definition of an industrial furnace. The process train would be conditionally exempt from the Boiler and Industrial Furnace (BIF) rule if it met the exemption criteria in 266.100(c) pertaining to levels of recoverable metals, heating value, and concentration of toxic organic compounds in the hazardous waste feed. Such exempt metals recovery facilities are not subject to RCRA permit requirements for combustion air emissions.

If the plasma arc/afterburner portion of the process train does not meet the above criteria, the entire process train would be subject to the incinerator standards of Subpart O, Part 264. This is because the devices (e.g., reverberatory furnace and plasma arc device) share a common afterburner and stack and the plasma arc device is burning or processing hazardous waste. Given that the reverberatory furnace portion of the process train is conditionally exempt from the BIF rule, the incinerator standards would be the only applicable standards.

Permitting Priority for the Device. The permitting priorities of the draft Waste Minimization and Combustion Strategy, issued in May 1993, relate to Regional and State efforts to work on permit applications submitted by RCRA facilities that combust hazardous industrial process wastes. To the extent that a combustion facility handles only remediation wastes (under either RCRA or Superfund), the priorities under the draft Strategy are not applicable. In addition, in a memorandum of May 9, 1994, Assistant Administrator Elliott Laws clarified that the Agency's shift of RCRA permit priorities did not mean that incineration should not be considered in assessing Superfund remedies. For further information on Superfund issues, please

contact John Smith, Chief, Design and Construction Management Branch, Hazardous Site Control Division, at (703) 603-8830.

I hope that this information will be helpful. If your staff have questions or would like to further discuss the issues, they may contact Mr. H. Scott Rauenzahn at 703-308-8477.

Attachments (2)
cc: M. Straus
S. Silverman
S. Sasseville
P. Borst
B. Holloway
S. Rauenzahn

9441.1993(03)

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

March 5, 1993

Mr. Christopher G. Swanberg
Senior Vice President
Separation and Recovery Systems
1762 McGaw Avenue
Irvine, California 92714-4962

Dear Mr. Swanberg,

Thank you for your letter dated November 12, 1992, concerning the use of the Separation and Recovery Systems (SRS) SAREX Process for the recycling of petroleum refinery oily wastes, and the status of this activity under the Resource Conservation and Recovery Act (RCRA). I apologize for the delay in responding to your inquiries. We appreciated the opportunity to meet with SRS personnel and Mr. Daniel Steinway (of Anderson, Kill, Olick and Oshinsky) on October 23, 1992, to discuss the issue in detail. You specifically requested that EPA concur with you that the SAREX Process, operating in the manner you described, meets the definition of "closed-loop" reclamation as provided in 40 CFR 261.4(a)(8). You also requested that EPA concur that if the SAREX Process was receiving listed hazardous wastes (e.g., K048 - K051), and met the conditions delineated in §261.4(a)(8), then the secondary materials within the process would no longer meet the definition of solid waste; and, residues exiting the SAREX Process (exclusive of recovered petroleum) (see footnote 1) would be subject to RCRA only if exhibiting a characteristic of hazardous waste.

Based upon the information provided by SRS, Mr. Steinway, and a careful review of the RCRA regulations, EPA does not agree that the SAREX Process meets the definition of "closed-loop" reclamation as defined in §261.4(a)(8). We would characterize the operation of the SAREX Process unit (as described by you) as meeting the definition of recycling, and therefore would not require a RCRA permit under the federal RCRA regulations (40 CFR 261.6(c)(1)); however, listed sludges and by-products being reclaimed in the process would remain solid and hazardous wastes within the unit, as

would any non-reclaimed residues exiting the unit (see footnote 1 concerning wastewater). The rationale for this determination is described below.

One condition of the closed-loop exclusion is that the reclaimed material cannot be used to produce a fuel, or to produce a product used in a manner constituting disposal (§261.4(a)(8)(iv)). Because the oil recovered using the SAREX Process is being returned to the refinery where it will be used to produce a fuel (or possibly to produce a product applied to the land), the closed-loop exclusion does not apply (see footnote 2).

If the oil is returned to part of the refining process where non-fuel (or non-land application) petroleum products are produced, it is possible that the SAREX Process might be eligible for the closed-loop exclusion. However, the SAREX Process must still be configured in a manner consistent with the other conditions of the closed-loop exclusion. EPA promulgated the closed-loop exclusion as part of the revised hazardous waste tank rules (51 FR 25422; July 14, 1986 Federal Register). Based upon comments received during the development of that rule, EPA determined that there was a substantial number of potentially regulated tanks engaged in "types of reclamation operations [that] are best viewed as part of the production process, not as a distinct waste management operation." 51 FR 25442. One of the conditions for the closed-loop exclusion that reflects the Agency's desire that the reclamation be integral to the production process is that "only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance" (§261.4(a)(8)(i)). Whether or not the SAREX Process will receive listed sludges and by-products directly from the production processes generating them, in a manner consistent with this provision, is a site-specific determination. This is especially true because the SAREX Process is designed to be installed at different refineries with potentially different configurations of production and the generation of listed sludges and by-products.

As you may know, the Definition of Solid Waste Task Force is presently revisiting the existing regulations governing the definition of solid waste and the recycling of hazardous secondary materials. The Task Force's goals include exploring ways to simplify the current regulatory system, in order to better encourage safe recycling and resource recovery. I can assure you

that the issues and ideas presented by SRS and Mr. Steinway during the meeting on October 23, 1992 (e.g., performance standards for recycling processes, definition of hazardous waste fuel) will be taken into consideration as the Task Force proceeds with its efforts. In addition, EPA is involved in an on-going dialogue with interested parties as part of the rulemaking process specifically related to the Hazardous Waste Identification Rule (HWIR), proposed on May 20, 1992 (57 FR 21450) and subsequently withdrawn on October 30, 1992 (57 FR 49280). Part of the original proposed rule discussed concentration-based exemption criteria (CBEC), whereby listed wastes would no longer be subject to Subtitle C requirements if treated to below certain constituent concentration levels. We would encourage you to participate in the on-going dialogue, specifically with regard to the types of materials entering the SAREX Process, and the residuals generated.

If you have any questions, please contact Ross Elliott of my staff at (202) 260-8551. Thank you for your interest in the safe recycling of hazardous wastes.

Sincerely,
Jeffery D. Denit
Deputy Director
Office of Solid Waste

cc: Mr. Daniel M. Steinway

1 With regard to wastewater effluent from the SAREX Process that is returned to the refinery's wastewater treatment system, EPA policy has been that if the refinery can show that the return water stream is chemically equivalent to the non-listed wastewater influent to the wastewater treatment device that originally generated the listed waste, then the return water stream is not derived-from hazardous waste. Return water that is "chemically equivalent" is defined for purposes of this policy as water that does not contain significantly higher levels of Appendix VIII constituents and total suspended solids (TSS).

2 However, the recovered oil returned to the refining process is exempt from hazardous waste regulations per 40 CFR 261.6(a)(3)(vi), as are the fuels produced from such oil (see §261.6(a)(3)(v) and (vii)).

Message

From: Galbraith, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0ABF7F5C1A5E462E8096CB58EF9757EB-MGALBRAI]
Sent: 1/23/2017 8:42:03 PM
To: Celeste, Laurel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8f5194a050ce4b758e02e6835fe0b43d-Celeste, Laurel]
CC: Atagi, Tracy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ebcfd670077440dfb63a691749f20af2-TATAGI]
Subject: Fw: update on Tradebe
Attachments: tradebe update 1-23-17 v4 .docx; Tradebe Status_ 10-12-16.docx

fyi - this one pager was a short turnaround exercise today

Mike Galbraith
Permits Branch (5303P)
Program Implementation/Information Division
Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

From: Galbraith, Michael
Sent: Monday, January 23, 2017 3:38 PM
To: Radtke, Meghan; Huggins, Richard
Cc: Sasseville, Sonya; Guernica, Mimi; Elliott, Ross; Atagi, Tracy; Kohler, Amanda; Young, Jessica; Behan, Frank
Subject: update on Tradebe

I heard Barnes may want an update on Tradebe since ETC is having a member meeting this week.

Attached is a one-pager I did today. I also attached a 2 pager sasha did for barnes last year (that I referenced).

Let me know if Barnes needs anything else.

Thanks!

Mike Galbraith
Permits Branch (5303P)
Program Implementation/Information Division
Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Message

From: Kohler, Amanda [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=665A6CDD3371457FB03D5184F58F7A4A-KOHLER, AMANDA]
Sent: 4/17/2017 2:31:21 PM
To: Galbraith, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0abf7f5c1a5e462e8096cb58ef9757eb-MGALBRAI]; Lee, Jae [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6e8957da9f254aab83632814f05d1cd2-JLee10]
CC: Behan, Frank [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b37b3a6d67644ad3bf5717d99610941e-FBEHAN]; Atagi, Tracy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ebcfd670077440dfb63a691749f20af2-TATAGI]; Young, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=26404c78d3dc441f810ac723cf8f9d49-JBIEGELS]
Subject: RE: Tradebe Status

Mike – you can use my line. I'll send you the information in a separate email.

Amanda Kohler
703-347-8975

From: Galbraith, Michael
Sent: Monday, April 17, 2017 10:18 AM
To: Lee, Jae <lee.jae@epa.gov>
Cc: Kohler, Amanda <Kohler.Amanda@epa.gov>; Behan, Frank <Behan.Frank@epa.gov>; Atagi, Tracy <Atagi.Tracy@epa.gov>; Young, Jessica <Young.Jessica@epa.gov>
Subject: Re: Tradebe Status

I don't have access to a conference line #. Does someone else here in orcr have a line we can use tomorrow?

Mike Galbraith
Permits Branch (5303P)
Program Implementation/Information Division
Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

From: Lee, Jae
Sent: Monday, April 17, 2017 10:07 AM
To: John Naddy
Cc: KIZER, BRUCE; rjean@idem.in.gov; Valentino, Michael; Setnicar, Mary; Galbraith, Michael
Subject: RE: Tradebe Status

Thank you John,

We can have an hour call on April 18, 2017, 1:00 pm, CDT.

I could not reserve a call-in line.

Can we use either HQ or State line??

Jae

From: NADDY, JOHN [mailto:JNADDY@idem.IN.gov]
Sent: Monday, April 17, 2017 8:53 AM
To: Lee, Jae <lee.jae@epa.gov>
Cc: KIZER, BRUCE <BKIZER@idem.IN.gov>; rjean@idem.in.gov; Valentino, Michael <Valentino.Michael@epa.gov>; Setnicar, Mary <Setnicar.Mary@epa.gov>; Galbraith, Michael <Galbraith.Michael@epa.gov>
Subject: RE: Tradebe Status

Jae-
Let's shoot for the 18th 1:00 p.m. – 2:00 p.m. CDT. Please let me know the conference call numbers to call in. Thanks.

John Naddy
Technical Environmental Specialist
Compliance and Response Branch
Office of Land Quality
Indiana Department of Environmental Management
317-233-0404

From: Lee, Jae [mailto:lee.jae@epa.gov]
Sent: Friday, April 14, 2017 9:39 AM
To: NADDY, JOHN <JNADDY@idem.IN.gov>
Cc: KIZER, BRUCE <BKIZER@idem.IN.gov>; JEAN, RUTH <RJEAN@idem.IN.gov>; Valentino, Michael <Valentino.Michael@epa.gov>; Setnicar, Mary <Setnicar.Mary@epa.gov>; Galbraith, Michael <Galbraith.Michael@epa.gov>
Subject: RE: Tradebe Status

John,

We can have a separate call with IDEM and HQ after our call with everyone.
(We have a call with HQ and R6 on 4/17, 11:00 am, CDT, for an hour, but it could be a little longer.)

We can brief you the status of the exemption issue and what we have discussed during the call with R6.

We can have a call with you either on April 17, 2:00 -2:30 pm, CDT or on 4/18 1:00 pm – 2:00 pm, CDT.

Please let me know which time zone is better for you or any other time you would prefer?

Jae

From: Lee, Jae
Sent: Thursday, April 13, 2017 4:25 PM
To: 'NADDY, JOHN' <JNADDY@idem.IN.gov>
Cc: KIZER, BRUCE <BKIZER@idem.IN.gov>; rjean@idem.in.gov
Subject: RE: Tradebe Status

John,

After discussing with HQ and R6 about IDEM's participation, we thought this would be better to have an EPA-only call to discuss different aspects of the issue.

I wish you would understand this.

I will discuss with our management for any pre-discussion of our findings with IDEM.

Jae

From: NADDY, JOHN [mailto:JNADDY@idem.IN.gov]
Sent: Thursday, April 13, 2017 11:56 AM
To: Lee, Jae <lee.jae@epa.gov>
Cc: KIZER, BRUCE <BKIZER@idem.IN.gov>; rjean@idem.in.gov
Subject: RE: Tradebe Status

Mr. Lee-

Is it possible to join the April 17th conference call between EPA Regions 5 and 6 and Headquarters discussing the Tradebe solids distillation system? Also, will it be possible to get a copy of the draft memo from Region 5 to Headquarters stating the Region's position on the issue?

John Naddy
Technical Environmental Specialist
Compliance and Response Branch
Office of Land Quality
Indiana Department of Environmental Management
317-233-0404

From: Lee, Jae [mailto:lee.jae@epa.gov]
Sent: Monday, April 10, 2017 11:43 AM
To: JEAN, RUTH <RJEAN@idem.IN.gov>
Cc: NADDY, JOHN <JNADDY@idem.IN.gov>; Setnicar, Mary <Setnicar.Mary@epa.gov>; SCHROER, CRAIG <CSCHROER@idem.IN.gov>; Valentino, Michael <Valentino.Michael@epa.gov>
Subject: Tradebe Status

Ruth,

I would like to let you know that we received response (mostly CBI) for the information request of the Desorption Units from Tradebe.

We have a meeting scheduled with Tradebe's representatives on April 12 at Chicago to discuss mass balance aspects of the units.

We are also scheduled a conference call with HQ and Region 6 on April 17.

If things are moving well, we might able to send a memo to HQ of the Region 5's position on this permit exemption issue by the end of April or early May.

Please let me know if you have any questions.

Jae

From: JEAN, RUTH [mailto:RJEAN@idem.IN.gov]
Sent: Tuesday, February 07, 2017 11:26 AM
To: Lee, Jae <lee.jae@epa.gov>
Cc: Valentino, Michael <Valentino.Michael@epa.gov>; John Naddy <jnaddy@idem.in.gov>; Setnicar, Mary <Setnicar.Mary@epa.gov>
Subject: RE: Tradebe waste derived fuel issue

Jae,

As I've informed you before, any questions related to the SDS decision should be directed to John Naddy.

When you called earlier, you asked if Tradebe generates HW fuels from their fuel blending operations, and who utilizes those fuels. For clarification, my answers were in relation to their permitted fuel blending operations only. I want to ensure that you did not think I was discussing the SDS unit.

For future reference, please understand that I cannot answer any questions regarding the SDS units. I am not familiar with the SDS, nor was I involved in the original decision. I can only answer questions regarding their hazardous waste permit.

Thanks,

Ruth

From: Lee, Jae [mailto:lee.jae@epa.gov]
Sent: Tuesday, February 07, 2017 11:33 AM
To: JEAN, RUTH
Cc: Valentino, Michael
Subject: Tradebe waste derived fuel issue

Ruth,

HQ came up a question that the IDEM's March 31, 2006 letter (attached) states that, in the second page, fifth paragraph, " If the unit was used to produce fuels or merely for treatment, the unit would require a HW treatment permit".

Since Tradebe generates hazardous waste derived fuels for the blending to send to off-site cement kilns, should they be required to have a treatment permit?

Any thoughts on this? This letter was referenced in the CAA permit.

Jae

Message

From: Galbraith, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0ABF7F5C1A5E462E8096CB58EF9757EB-MGALBRAI]
Sent: 1/23/2017 8:38:17 PM
To: Radtke, Meghan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7a364f0faad54a79be238288fa3496cf-Radtke, Meghan]; Huggins, Richard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0314e81a1f4843fcbbe0910cfddd53f4-Huggins, Richard]
CC: Sasseville, Sonya [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9302bd775fa84bebbbe0c430316f76c6-SSASSEVI]; Guernica, Mimi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c8a7d898ed74b678830c17ee521a045-MGUERNIC]; Elliott, Ross [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33cb08013cc94c21a3e3236dbad4c4a4-REELLIOT]; Atagi, Tracy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ebcfd670077440dfb63a691749f20af2-TATAGI]; Kohler, Amanda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=665a6cdd3371457fb03d5184f58f7a4a-Kohler, Amanda]; Young, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=26404c78d3dc441f810ac723cf8f9d49-JBIEGELS]; Behan, Frank [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b37b3a6d67644ad3bf5717d99610941e-FBEHAN]
Subject: update on Tradebe
Attachments: tradebe update 1-23-17 v4 .docx; Tradebe Status_ 10-12-16.docx

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Attached is a one-pager I did today. I also attached a 2 pager sasha did for barnes last year (that I referenced).

Let me know if Barnes needs anything else.

Thanks!

Mike Galbraith
Permits Branch (5303P)
Program Implementation/Information Division
Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Message

From: Galbraith, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0ABF7F5C1A5E462E8096CB58EF9757EB-MGALBRAI]
Sent: 9/1/2016 11:19:21 AM
To: Behan, Frank [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b37b3a6d67644ad3bf5717d99610941e-FBEHAN]; Sager, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b9aaed0c9130464bb2bc9c8c7c265061-JSAGER]; Young, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=26404c78d3dc441f810ac723cf8f9d49-JBIEGELS]; Atagi, Tracy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ebcfd670077440dfb63a691749f20af2-TATAGI]; Gerhard, Sasha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=409f48684eb4422cb13177fc9702d0fa-Gerhard, Sasha]; Gaines, Jeff [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c0ce5613e3c245b09c6ccad71cf3062a-JGAINE02]; Colon, Lilybeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6ae6d0cc3f984b08b8101569a2cf6308-Colon, Lilybeth]
CC: Kohler, Amanda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=665a6cdd3371457fb03d5184f58f7a4a-Kohler, Amanda]
Subject: FW: Control: Letter from Environmental Technology Council - Thermal Desorption Units

Fyi (see below) - i'm on vacation starting this afternoon thru next week

From: Kohler, Amanda
Sent: Wednesday, August 31, 2016 3:30 PM
To: Galbraith, Michael <Galbraith.Michael@epa.gov>
Subject: FW: Control: Letter from Environmental Technology Council - Thermal Desorption Units

Looks like we are waiting on OLEM's front office to assign the control to us....

Amanda Kohler
703-347-8975

From: Shiffman, Cari
Sent: Wednesday, August 31, 2016 3:16 PM
To: Kohler, Amanda <Kohler.Amanda@epa.gov>
Subject: RE: Control: Letter from Environmental Technology Council - Thermal Desorption Units

Amanda,

We assigned OLEM as the lead (OECA-16-001-1066) on August 10, but it looks like the CMS person in OLEM's front office hasn't yet assigned it to ORCR. Did you get the printed package with the letters? I sent them via interoffice mail to Barnes.

Thanks,

Cari Shiffman, Special Assistant
U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office: (202) 564-2898 | Mobile: (202) 823-3277

From: Kohler, Amanda
Sent: Wednesday, August 31, 2016 3:09 PM
To: Shiffman, Cari <Shiffman.Cari@epa.gov>
Subject: Control: Letter from Environmental Technology Council - Thermal Desorption Units

Hi Cari,

Can you please tell me if you've officially assigned the attached control to OLEM yet? (Your email in the attached states so; however, we haven't seen anything come through on our end yet…)

Amanda Kohler
703-347-8975

From: Robinson, Yvonne
Sent: Tuesday, August 30, 2016 11:42 AM
To: Johnson, Barnes <Johnson.Barnes@epa.gov>; Sasseville, Sonya <Sasseville.Sonya@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>; Guernica, Mimi <Guernica.Mimi@epa.gov>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Elliott, Ross <Elliott.Ross@epa.gov>
Subject: RE: Control: Letter from Environmental Technology Council - Thermal Desorption Units

FYI per Barnes.

Yvonne Robinson
Administrative Assistant (SEE)
Office of Resource Conservation and Recovery
U.S. EPA
(703)308-8873

From: VA-PYS-6971-M@EPA.GOV [mailto:VA-PYS-6971-M@EPA.GOV]
Sent: Tuesday, August 30, 2016 11:34 AM
To: Robinson, Yvonne <robinson.yvonne@epa.gov>
Subject:

Message

From: Young, Jessica [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=26404C78D3DC441F810AC723CF8F9D49-JBIEGELS]
Sent: 4/17/2017 2:18:22 PM
To: Atagi, Tracy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ebcfd670077440dfb63a691749f20af2-TATAGI]; Galbraith, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0abf7f5c1a5e462e8096cb58ef9757eb-MGALBRAI]
Subject: RE: Tradebe Status

From last week, we don't have any topics on the SWERLO agenda, so Tracy should be ok for 2 pm. And I can cover SWERLO if a topic comes up. Thanks.

_____

Jessica Young
Chief of Recycling and Generator Branch
Office of Resource Conservation and Recovery
Desk Phone: 703-308-0026 Work Cell: 571-721-9460

From: Atagi, Tracy
Sent: Monday, April 17, 2017 9:58 AM
To: Galbraith, Michael <Galbraith.Michael@epa.gov>
Cc: Young, Jessica <Young.Jessica@epa.gov>
Subject: Re: Tradebe Status

This would be 2:00 pm our time, right? I should be able to make it unless I'm needed at the ORCR SWERLO general (right now I don't think that any of my topics are likely to come up)

From: Galbraith, Michael
Sent: Monday, April 17, 2017 9:55 AM
To: Atagi, Tracy
Subject: Fw: Tradebe Status

are you available Tuesday to talk to idem - see below

Mike Galbraith
Permits Branch (5303P)
Program Implementation/Information Division
Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

From: NADDY, JOHN <JNADDY@idem.IN.gov>
Sent: Monday, April 17, 2017 9:53 AM
To: Lee, Jae

Cc: KIZER, BRUCE; rjean@idem.in.gov; Valentino, Michael; Setnicar, Mary; Galbraith, Michael
Subject: RE: Tradebe Status

Jae-
Let's shoot for the 18th 1:00 p.m. – 2:00 p.m. CDT. Please let me know the conference call numbers to call in. Thanks.

John Naddy
Technical Environmental Specialist
Compliance and Response Branch
Office of Land Quality
Indiana Department of Environmental Management
317-233-0404

From: Lee, Jae [mailto:lee.jae@epa.gov]
Sent: Friday, April 14, 2017 9:39 AM
To: NADDY, JOHN <JNADDY@idem.IN.gov>
Cc: KIZER, BRUCE <BKIZER@idem.IN.gov>; JEAN, RUTH <RJEAN@idem.IN.gov>; Valentino, Michael <Valentino.Michael@epa.gov>; Setnicar, Mary <Setnicar.Mary@epa.gov>; Galbraith, Michael <Galbraith.Michael@epa.gov>
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(We have a call with HQ and R6 on 4/17, 11:00 am, CDT, for an hour, but it could be a little longer.)

We can brief you the status of the exemption issue and what we have discussed during the call with R6.

We can have a call with you either on April 17, 2:00 -2:30 pm, CDT or on 4/18 1:00 pm – 2:00 pm, CDT.

Please let me know which time zone is better for you or any other time you would prefer?

Jae

From: Lee, Jae
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To: 'NADDY, JOHN' <JNADDY@idem.IN.gov>
Cc: KIZER, BRUCE <BKIZER@idem.IN.gov>; rjean@idem.in.gov
Subject: RE: Tradebe Status

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I will discuss with our management for any pre-discussion of our findings with IDEM.

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Mr. Lee-

Is it possible to join the April 17th conference call between EPA Regions 5 and 6 and Headquarters discussing the Tradebe solids distillation system? Also, will it be possible to get a copy of the draft memo from Region 5 to Headquarters stating the Region's position on the issue?

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Technical Environmental Specialist
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Ruth,

I would like to let you know that we received response (mostly CBI) for the information request of the Desorption Units from Tradebe.

We have a meeting scheduled with Tradebe's representatives on April 12 at Chicago to discuss mass balance aspects of the units.

We are also scheduled a conference call with HQ and Region 6 on April 17.

If things are moving well, we might able to send a memo to HQ of the Region 5's position on this permit exemption issue by the end of April or early May.

Please let me know if you have any questions.

Jae

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To: Lee, Jae <lee.jae@epa.gov>
Cc: Valentino, Michael <Valentino.Michael@epa.gov>; John Naddy <jnaddy@idem.in.gov>; Setnicar, Mary <Setnicar.Mary@epa.gov>
Subject: RE: Tradebe waste derived fuel issue

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For future reference, please understand that I cannot answer any questions regarding the SDS units. I am not familiar with the SDS, nor was I involved in the original decision. I can only answer questions regarding their hazardous waste permit.

Thanks,

Ruth

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Since Tradebe generates hazardous waste derived fuels for the blending to send to off-site cement kilns, should they be required to have a treatment permit?

Any thoughts on this? This letter was referenced in the CAA permit.

Jae

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To: Lee, Jae [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6e8957da9f254aab83632814f05d1cd2-JLee10]
CC: Kohler, Amanda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=665a6cdd3371457fb03d5184f58f7a4a-Kohler, Amanda]; Behan, Frank [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b37b3a6d67644ad3bf5717d99610941e-FBEHAN]; Atagi, Tracy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ebcfd670077440dfb63a691749f20af2-TATAGI]; Young, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=26404c78d3dc441f810ac723cf8f9d49-JBIEGELS]
Subject: Re: Tradebe Status

I don't have access to a conference line #. Does someone else here in orcr have a line we can use tomorrow?

Mike Galbraith
Permits Branch (5303P)
Program Implementation/Information Division
Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

From: Lee, Jae
Sent: Monday, April 17, 2017 10:07 AM
To: John Naddy
Cc: KIZER, BRUCE; rjean@idem.in.gov; Valentino, Michael; Setnicar, Mary; Galbraith, Michael
Subject: RE: Tradebe Status

Thank you John,

We can have an hour call on April 18, 2017, 1:00 pm, CDT.

I could not reserve a call-in line.

Can we use either HQ or State line??

Jae

From: NADDY, JOHN [mailto:JNADDY@idem.IN.gov]
Sent: Monday, April 17, 2017 8:53 AM
To: Lee, Jae <lee.jae@epa.gov>
Cc: KIZER, BRUCE <BKIZER@idem.IN.gov>; rjean@idem.in.gov; Valentino, Michael <Valentino.Michael@epa.gov>; Setnicar, Mary <Setnicar.Mary@epa.gov>; Galbraith, Michael <Galbraith.Michael@epa.gov>
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**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

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Subject: FW: Tradebe

Fyi – sounds like tradebe is communicating with barnes – I assume its that same legal rep based here in dc that previous met with us/barnes. See below

Mike Galbraith
Permits Branch (5303P)
Program Implementation/Information Division
Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

(703) 605-0567

From: Galbraith, Michael
Sent: Thursday, September 21, 2017 7:11 AM
To: Atagi, Tracy <Atagi.Tracy@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>
Subject: RE: Tradebe

Correct – not sure who else will be coming in – last I heard Tita said there will be other technical folks with her

Mike Galbraith
Permits Branch (5303P)
Program Implementation/Information Division
Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

(703) 605-0567

From: Atagi, Tracy
Sent: Wednesday, September 20, 2017 4:02 PM
To: Johnson, Barnes <Johnson.Barnes@epa.gov>; Galbraith, Michael <Galbraith.Michael@epa.gov>
Subject: Re: Tradebe

I believe the Tradebe rep that we'll be meeting with next week is Tita LaGrimas, Executive Vice President for Regulatory Affairs. There will also be some of the technical folks.

Mike, can you confirm?

From: Johnson, Barnes
Sent: Wednesday, September 20, 2017 3:44 PM
To: Galbraith, Michael; Atagi, Tracy
Subject: Tradebe

Who are you going to be meeting w? A guy from Tradebe is asking.

Sent from my iPhone

Message

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fyi

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To: JEAN, RUTH <RJEAN@idem.IN.gov>
Cc: NADDY, JOHN <JNADDY@idem.IN.gov>; Setnicar, Mary <Setnicar.Mary@epa.gov>; SCHROER, CRAIG <CSCHROER@idem.IN.gov>; Valentino, Michael <Valentino.Michael@epa.gov>
Subject: Tradebe Status

Ruth,

I would like to let you know that we received response (mostly CBI) for the information request of the Desorption Units from Tradebe.

We have a meeting scheduled with Tradebe's representatives on April 12 at Chicago to discuss mass balance aspects of the units.

We are also scheduled a conference call with HQ and Region 6 on April 17.

If things are moving well, we might able to send a memo to HQ of the Region 5's position on this permit exemption issue by the end of April or early May.

Please let me know if you have any questions.

Jae

From: JEAN, RUTH [mailto:RJEAN@idem.IN.gov]
Sent: Tuesday, February 07, 2017 11:26 AM
To: Lee, Jae <lee.jae@epa.gov>
Cc: Valentino, Michael <Valentino.Michael@epa.gov>; John Naddy <jnaddy@idem.in.gov>; Setnicar, Mary <Setnicar.Mary@epa.gov>
Subject: RE: Tradebe waste derived fuel issue

Jae,

As I've informed you before, any questions related to the SDS decision should be directed to John Naddy.

When you called earlier, you asked if Tradebe generates HW fuels from their fuel blending operations, and who utilizes those fuels. For clarification, my answers were in relation to their permitted fuel blending operations only. I want to ensure that you did not think I was discussing the SDS unit.

For future reference, please understand that I cannot answer any questions regarding the SDS units. I am not familiar with the SDS, nor was I involved in the original decision. I can only answer questions regarding their hazardous waste permit.

Thanks,

Ruth

From: Lee, Jae [mailto:lee.jae@epa.gov]
Sent: Tuesday, February 07, 2017 11:33 AM
To: JEAN, RUTH
Cc: Valentino, Michael
Subject: Tradebe waste derived fuel issue

Ruth,

HQ came up a question that the IDEM's March 31, 2006 letter (attached) states that, in the second page, fifth paragraph, " If the unit was used to produce fuels or merely for treatment, the unit would require a HW treatment permit".

Since Tradebe generates hazardous waste derived fuels for the blending to send to off-site cement kilns, should they be required to have a treatment permit?

Any thoughts on this? This letter was referenced in the CAA permit.

Jae

Message

From: Galbraith, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0ABF7F5C1A5E462E8096CB58EF9757EB-MGALBRAI]
Sent: 9/21/2017 11:10:38 AM
To: Atagi, Tracy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ebcfd670077440dfb63a691749f20af2-TATAGI]; Johnson, Barnes [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c39e9338cbf04dc3b4b29f78e5213303-Johnson, Barnes]
Subject: RE: Tradebe

Correct – not sure who else will be coming in – last I heard Tita said there will be other technical folks with her

Mike Galbraith
Permits Branch (5303P)
Program Implementation/Information Division
Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

(703) 605-0567

From: Atagi, Tracy
Sent: Wednesday, September 20, 2017 4:02 PM
To: Johnson, Barnes <Johnson.Barnes@epa.gov>; Galbraith, Michael <Galbraith.Michael@epa.gov>
Subject: Re: Tradebe

I believe the Tradebe rep that we'll be meeting with next week is Tita LaGrimas, Executive Vice President for Regulatory Affairs. There will also be some of the technical folks.

Mike, can you confirm?

From: Johnson, Barnes
Sent: Wednesday, September 20, 2017 3:44 PM
To: Galbraith, Michael; Atagi, Tracy
Subject: Tradebe

Who are you going to be meeting w? A guy from Tradebe is asking.

Sent from my iPhone

Message

From: Carl Palmer [cpalmer@tdxassociates.com]
Sent: 1/23/2017 4:58:45 PM
To: deq.publicnotices@la.gov
CC: ann.finney@la.gov; Spalding, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17fb5ab7a65145d4bde2327fc6d02378-Spalding, Susan]; Tidmore, Guy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6e9af087a1ce4703b25a4a8e6fa048dd-Tidmore, Guy]; Fruitwala, Kishor [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7a19009ba86a4236b97131d5d16f2fae-Fruitwala, Kishor]; Luschek, Robert [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd6769c1089e464ebe6e5f345960a0cf-Luschek, Robert]; Pearson, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d10433f23dd64bd2a3efc03d6367856c-Pearson, Evan]; Payne, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=61b3204a683041079512b122c580a569-Payne, Jame]; Price, Lisa [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0b4a7d6cc6094c868ffef7fcf3225245-Price, Lisa]; Jones, Bruced [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9026926c877140cbae1d4c0739729813-Jones, Bruced]; Devlin, Betsy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b76a4bf5afc84459a6bf2a6a4645f40f-BDEVLIN]; Elliott, Ross [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33cb08013cc94c21a3e3236dbad4c4a4-REELLIOT]; Atagi, Tracy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ebcfd670077440dfb63a691749f20af2-TATAGI]; Stenger, Wren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c109285f44b14f70a224be41ab99e9e2-Stenger, Wren]
Subject: Comments on Thermaldyne 12/22/2016 draft Solid Waste Permit Activity Number PER20160001
Attachments: Thermaldyne_TDU_Draft2_SW_Permit_Comments_20170123.pdf

Please accept my attached comments on the subject draft solid waste permit.

--

Carl R. Palmer, P.E.
TD*X Associates LP
(919) 349-1583 mobile

TD*X Associates LP
148 South Dowlen Road, PMB 700
Beaumont, TX 77707

From the Desk of
Carl R. Palmer
TD*X Associates, LLC
PO Box 13216
Research Triangle Park, NC 27709
ph (919) 349-1583
FAX (509) 692-8791
E-mail: cpalmer@tdxassociates.com

January 23, 2017

Louisiana Department of Environmental Quality
Public Participation Group
PO Box 4313
Baton Rouge, LA 70821

VIA Email. Deq.publicnotices@la.gov

SUBJECT: AI Number 198467,
Activity Number PER20160001

Dear Sir or Madame;

I have reviewed the December 22, 2016 Draft Solid Waste Standard Permit that approves the Thermaldyne LLC request to install a thermal desorption unit (TDU) and three centrifuges for the processing of oily solid wastes. This letter presents my comments on this most recent Draft permit. I am also providing comments on Thermaldyne's permit application documents as it relates to this matter.

The present draft permit provides minor revisions to the Department's previous draft that was published in May 2016. After that draft was published, Thermaldyne changed a US Government tax reporting code to change the designation of their principal activity to be SIC Code 2911 *Petroleum Refinieries*. These SIC codes are primarily used for tracking business economic activity in the US and do not undergo any review as to their suitability in regards to a particular business' claim. To be clear, the proposed Thermaldyne facility does NOT primarily or even in any way engage *in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, and lubricants, through fractionation or straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes,* which is the exact literally prescribed definition of a 2911 facility. Any designation of the waste treatment activities at Thermaldyne that considers the facility to be a petroleum refinery is a sham, and is clearly a direct avoidance of the substantial and appropriate regulations enacted regarding the thermal treatment of regulated hazardous waste materials.

I have attached a letter that provides a very clear determination from USEPA in regard to this matter. Please refer to Attachment 1, a December 20, 2016 letter from USEPA Region 6 to Estuardo Silva at LDEQ. USEPA does not consider the Thermaldyne facility to be a petroleum refinery, and clearly states that waste treatment at Thermaldyne of hazardous secondary materials from petroleum refineries requires a RCRA hazardous waste permit.

If as stated in their June 15, 2016 letter to the Department, Thermaldyne intends to receive "excluded" oil bearing hazardous secondary materials from petroleum refineries and reclaim them to produce "residual fuel oils," this Thermaldyne statement confirms that their facility is indeed performing a regulated hazardous waste facility, and not engaged in "petroleum refining." As stated in the 1998 final rulemaking for the EPA's longstanding "petroleum refinery" exclusion from hazardous waste, that exclusion applies to oil bearing hazardous secondary materials that are *immediately recovered and used in the refining process.* The Thermaldyne facility includes no "refining process" but rather includes only a thermal desorption unit for waste treatment and three centrifuges for separation of oily waste water and sludge.

Generation of a residual fuel oil by thermal desorption treatment of refinery OBHSM at a reclamation facility that is separate from both the petroleum refinery generating the OBHSM and a refinery that is "inserting the recovered oil into the refining process" is a regulated hazardous waste thermal treatment activity. That is particularly true when the waste treatment activity is performed offsite from the generating petroleum refinery and the recovered oil is used as a residual fuel oil that is burned as a fuel.

Thermaldyne is proposing to install a rotary kiln thermal desorption unit at their recycling facility to process oily sludges from petroleum refineries and petrochemical plants that would normally be considered regulated hazardous waste. However, by claiming that the rotary kiln is really a "petroleum refinery" they are avoiding LDEQ, USEPA and public review for siting a new hazardous waste treatment facility. They are also avoiding being subject to numerous technical standards meant to protect both the environment and the public from releases of hazardous waste, as well as strict emission limits for air pollution from hazardous waste thermal treatment.

When Thermaldyne first proposed this facility in 2015 they made a promise to exclude hazardous wastes from their recycling activity. Now, with a last minute paperwork change they are trying to get permission to process tens of thousands of tons per year of toxic and flammable wastes from petroleum refineries and petrochemical plants. LDEQ and EPA normally require this type of hazardous waste thermal treatment facility to undergo years of exhaustive study and to install protections including engineered equipment and barriers to:

- verify that the facility meets requirements to prevent and contain spills,
- characterize waste prior to receipt,
- conditions and procedures to track materials to assure safe and legal treatment and disposal,

- control air emissions from the hazardous waste thermal treatment to extremely low levels for chemicals like hydrochloric acid, dioxins, mercury, lead, cadmium, arsenic, chromium, beryllium, and uncombusted toxic organic chemicals like benzene and benzo-a-pyrene,
- establish detailed procedures to guarantee that waste materials are properly disposed to prevent illegal mixing into commercial products or pollution of the land

If LDEQ and EPA accept Thermaldyne's claim that this waste processing facility is really a "petroleum refinery" they will allow Thermaldyne to avoid numerous hazardous waste laws. Thermaldyne will circumvent the protections provided by these hazardous waste laws and regulations. This will set a significant precedent in both Louisiana and the Gulf Coast. It is predictable considering the extensive refining and petrochemical industry in the region that Louisiana could become the host to more and more of these sham recycling facilities.

Detailed Analysis of Thermaldyne's "Petroleum Refinery" Claim

In order for Thermaldyne's claim to be successful, it must show compliance with the regulatory exclusions in 40 CFR 261.4(a)(12)(i) and (ii) relating to oil-bearing hazardous secondary materials that are generated at a petroleum refinery and recovered oil; and in 40 CFR 261.4(a)(18) if hazardous secondary materials are reclaimed from "associated petrochemical manufacturing facilities." Thermaldyne's principal hurdle remains to be showing that their facility comes within the definition of "petroleum refinery," and in the case of petrochemical waste reclamation that the oil generated from a petrochemical manufacturing facility is associated with a facility that is physically co-located with a petroleum refinery.

Section 261.4(a)(12)(i) excludes from hazardous waste regulation oil-bearing hazardous secondary materials that are generated at a petroleum refinery (SIC 2911) and are inserted into the petroleum refining process unless the material is placed on the land, or speculatively accumulated before being recycled. This section allows oil-bearing hazardous secondary materials to be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery and still be excluded from hazardous waste regulation.

Thus, the exclusion allows for refinery oil-bearing hazardous secondary material to be sent off-site for processing. However, the oil-bearing material must either be generated by a petroleum refinery or sent off-site to another petroleum refinery. There is no definition of the term "petroleum refinery" in 40 CFR 261; however, EPA defined the term in the preamble to a proposed rule amending the exclusion:

> Petroleum refineries are defined as "establishments primarily engaged in the production of gasoline, distillate fuel oils, residual fuel oils, naptha, liquefied refinery gases, and lubricants through the integration of fractionation and/or straight distillation of crude oil, re-distillation of unfinished petroleum derivatives, cracking, or other processes" (Office of Management and Budget, 1987). 60 *Fed. Reg.* 57750 (Nov. 20, 1995).

It is clear from this preamble definition that petroleum refineries must generally be engaged in the processing of crude oil. This criterion clearly disqualifies Thermaldyne's proposed facility from consideration as a petroleum refinery. The portion of the above definition specifying "straight distillation of crude oil" or "re-distillation of unfinished petroleum derivatives" is especially important as it relates to Thermaldyne, given that their proposed installation does not include a crude oil distillation column, or even a remotely similar process, to justify consideration of their facility as a petroleum refinery. This portion of EPA's definition requires either distillation of crude oil or re-distillation of "unfinished petroleum derivatives." Distillation at Thermaldyne's facility must be either distillation of crude oil or re-distillation of unfinished petroleum derivatives. Thermaldyne proposes neither, and therefore they would not be considered a petroleum refinery and Thermaldyne's activity is not eligible for an exclusion under 40 CFR 261.4(a)(12)(i).

Secondly, under 40 CFR 261.4(a)(12)(ii), in order for the recovered oil produced by Thermaldyne to be excluded from regulation, it must be "recycled in the same manner and with the same conditions" described in 40 CFR 261.4(a)(12)(i). Therefore, if Thermaldyne fails to meet the criteria in paragraph (i), the oil recovered from that process will not be excluded from regulation either. Paragraph (ii) further provides that "[r]ecovered oil is oil that has been reclaimed from secondary materials . . . generated from *normal* petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incidents thereto" (emphasis added). The use of the word "normal" to describe the refining practices from which the recovered oil must be generated should dictate strict application of EPA's definition of "petroleum refinery" discussed above, rather than a loosely-held variation that would allow mere construction of a distillation column to determine regulatory status. Applying a strict definition is especially important in this context where so much rides on this determination: depending on the outcome, the facility will either be fully regulated or completely excluded from regulation under RCRA.

In the broad descriptions included in their permit application document, Thermaldyne also proposes to reclaim secondary materials from petrochemical plants. The regulatory status of this activity is governed by 40 CFR 261.4(a)(18), which provides an exclusion for petrochemical recovered oil from "an associated organic chemical manufacturing facility, where oil is to be inserted into the petroleum refining process . . . along with normal petroleum refinery process streams." First, notice that this exclusion is contingent on insertion of petrochemical materials into a petroleum refining process that process "normal" petroleum refinery process streams. Thus, in order for Thermaldyne to conform to this exclusion, it must be a petroleum refinery, as discussed above. Second, the refining process must involve "normal petroleum refinery process streams." It appears that Thermaldyne could be disqualified on both grounds by failing to conform to EPA's definition of petroleum refinery and by not processing materials that are "normally" considered to be petroleum refinery process streams.

In addition, paragraph (i) of this section limits the exclusion to oil that is hazardous only because it exhibits the characteristic of ignitability and/or toxicity for benzene. This condition would limit the types of petrochemical wastes that could be reclaimed at Thermaldyne, provided that it

could otherwise come within this exclusion. Paragraph (ii) of this section further limits applicability of the exclusion by defining "an associated organic chemical manufacturing facility" as a facility that (1) has an SIC code of 2869, and (2) is physically co-located with a petroleum refinery and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. Thus, in order to be able to process "excluded" petrochemical waste, Thermaldyne's "refinery" must be considered to be co-located with the petrochemical plant from which it is receiving the material. Even if EPA or LDEQ determines that Thermaldyne is a petroleum refinery, Thermaldyne could not process petrochemical wastes except from petrochemical plants with which it is co-located. In a preamble to the final rule promulgating this exclusion, EPA stated that "co-located" means "that the petroleum refinery and the organic chemical manufacturing facility are physically adjacent to one another, or otherwise share a common boundary." 63 *Fed. Reg.* 42130 (Aug. 6, 1998). This requirement severely curtails eligibility for this exclusion.

In conclusion, given that the Thermaldyne facility meets neither the definition of a "petroleum refinery" nor is it co-located with an "associated petrochemical facility" receipt and reclamation of hazardous secondary materials from either of these facilities would constitute regulated hazardous waste treatment. This would require a full RCRA Part B permit and cannot be legally performed under the proposed Solid Waste Permit for recycling. Any petroleum refinery or petrochemical plant generator of these hazardous secondary materials that shipped them to Thermaldyne for reclamation would be in violation of RCRA. Thermaldyne receiving them, storing them, subjecting them to reclamation by centrifuging or thermal desorption, and selling or shipping the reclaimed oil from them would all be activities that are in direct violation of RCRA.

Restatement of Previous Comments

In my June 30, 2016 comment letter to the Department I made numerous comments on the permit and permit application. The majority of those remain my comments, and have not been withdrawn. For completeness, I am repeating them, with expanded and slightly revised comments based on changes made to the Solid Waste Permit in this latest publication.

Both the draft Solid Waste Permit and the Thermaldyne permit application state that the facility is prohibited from accepting hazardous waste materials for processing. This prohibition is clearly stated by both LDEQ and Thermaldyne, without nuance or qualification. LDEQ further states both in a letter to Thermaldyne and in the permit fact sheet that no variances are being requested or approved as part of this solid waste permit. All of those facts are essential, because the processing of hazardous waste materials, including hazardous secondary materials, would be unauthorized and against LDEQ and EPA regulations because this facility does not meet the technical and administrative requirements for processing either of those material types.

This facility uses a TDU that is a thermal treatment unit for waste reclamation. The facility combusts a non-condensable portion of the waste received in an associated Thermal Oxidizer. When hazardous wastes are reclaimed, they remain hazardous waste under the EPA definition of

solid waste (DSW) at 40 CFR 261.2. Hazardous waste reclamation facilities require a hazardous waste permit under the LDEQ regulations that implement EPA's RCRA regulations. Those permits contain numerous siting criteria, technical standards, operation and recordkeeping requirements, and undergo an administrative process embracing substantial public participation. The Thermaldyne facility meets none of those requirements and is consequently unsuitable for either hazardous waste or hazardous secondary material reclamation.

On another point, the Thermaldyne facility includes three centrifuges for the processing of solid waste liquids. These units will generate large quantities of waste water contaminated by pollutants, including sediment, free oil, volatile organic compounds and toxic metals. The Operating Plan states that this water will be discharged to "the outfall." However, Thermaldyne has not requested or received any permission from LDEQ for a surface water discharge of this waste water. The Operating Plan is made a permit condition by reference in this Solid Waste Permit. However, that inclusion by LDEQ does not constitute permission for an unpermitted surface water discharge. Also, rainwater that falls in the waste processing area will become contaminated by pollutants, including sediment, free oil, volatile organic compounds and toxic metals. No storm water pollution prevention plan or discharge permit has been requested from or granted by LDEQ. In the absence of these permits and approvals, these waste waters would need to be shipped offsite for appropriate waste disposal. Their discharge to the local surface waters that include direct flows to the Mississippi river are unauthorized and inappropriate.

I have an additional comment related to the fact that Thermaldyne appears to be planning on generating a recycled oil from the processing of regulated solid waste liquids and solids in the TDUs and centrifuges. The Department should implement specific conditions of operation for both the TDUs and the centrifuges to preclude the disposal of hazardous waste in the "recycled oil" that is generated from these units. Neither the Operating Plan nor the Waste Acceptance Plan provided by Thermaldyne include any provisions for testing of the "recycled oil" to establish that it is either not a hazardous waste, or derived from a hazardous waste. If the "recovered oil" is to be burned as a fuel that may affect the status of the secondary materials that are received at the facility and render them hazardous wastes, as opposed to recyclable secondary materials. If the recovered oil is to be burned as a fuel, proper notification should be provided to LDEQ of that practice so that appropriate hazardous waste management determinations can be reviewed. As a minimum LDEQ should require that Thermaldyne manage the recovered oil material as a valuable product, protect it securely, prevent it from becoming spilled or discarded or placed on the land, establish contracts for its sale that incorporate consensus product quality specifications, and similar practices to establish that the material is not a waste. These conditions would also prevent "sham recycling" of hazardous waste from being performed by Thermaldyne. Otherwise, a new waste determination should be made for the appropriate management of the "recovered oil," using hazardous waste characteristic criteria. If the material exhibits a hazardous waste characteristic then it must be appropriately stored on site, manifested, and disposed at properly permitted facilities. At 1,400 ton/day of permitted capacity, if the oil content of the solid waste materials is 15%, then the facility would be generating 50,000 gallons of "recovered oil" per day. This quantity of material could quickly become a problem.

I am also providing detailed itemized comments on both the published Draft Permit as well as the Thermaldyne permit application documents. These comments are provided on the following pages.

It is appropriate for the Department to grant Themaldyne approval to receive, recycle and process non-hazardous oil bearing materials. The source of those materials must be exclusively from non-hazardous waste sources. Appropriate sources would be excluded and non-hazardous oily materials from petroleum exploration and production (E&P) operations, and similarly regulated materials. It is completely inappropriate through this Solid Waste Permit for the Department to grant approval for Thermaldyne to receive or process any hazardous waste materials, including oil bearing hazardous secondary materials from petroleum refineries.

Sincerely,

Carl R. Palmer 2017.01.23 11:50:32 -05'00'

Carl R. Palmer, P.E.

Cc:	Ann Finney	LDEQ (via email)
	Susan Spalding	USEPA Region 6 (via email)
	Guy Tidmore	USEPA Region 6 (via email)
	Evan Pearson	USEPA Region 6 (via email)
	Dr. Kishor Fuitwala	USEPA Region 6 (via email)
	Robert Luschek	USEPA Region 6 (via email)
	Wren Stegner	USEPA Region 6 (via email)
	Jim Payne	USEPA Region 6 (via email)
	Lisa Price	USEPA Region 6 (via email)
	Bruce Jones	USEPA Region 6 (via email)
	Betsy Devlin	USEPA HQ (via email)
	Ross Elliott	USEPA HQ (via email)
	Traci Atagi	USEPA HQ (via email)

ITEMIZED COMMENTS ON LDEQ DRAFT PERMIT

Conditions R-45, R-51
Issuance of Standard Permit Letter to Richard A. Cates

These three instances clearly state that the facility is prohibited from accepting hazardous waste materials for processing. This prohibition is also included in the Comprehensive Operating Plan and Waste Acceptance Plan that are incorporated by reference in Attachment 1. This prohibition of hazardous waste receipt is clearly stated by both LDEQ and Thermaldyne, without nuance or qualification. LDEQ further states both in a letter to Thermaldyne and in the permit fact sheet that no variances are being requested or approved as part of this solid waste permit. All of those facts are essential, because the processing of hazardous waste materials, including hazardous secondary materials, would be unauthorized and against LDEQ and EPA regulations because this facility does not meet the technical and administrative requirements for processing either of those material types.

The Thermaldyne TDU combusts a portion of the solid waste that is processed in the associated thermal oxidizer. If either hazardous waste, or hazardous secondary materials are received and placed in the TDU, that would constitute regulated hazardous waste thermal treatment. That determination remains the same regardless of the claim that recycling is being performed, or that recycled oil is being returned to the generator or sold as a recycled product. No solid waste permit, or even a variance can authorize the unpermitted thermal treatment of hazardous waste. A RCRA hazardous waste permit would be required for the Thermaldyne facility in that case. This regulatory approval process is mandatory, and LDEQ would require Thermaldyne to submit a full RCRA hazardous waste permit application meeting all of the technical and administrative requirements.

Consider including a prohibition on the receipt of hazardous secondary materials, including Oil Bearing Hazardous Secondary Materials, along with the prohibition on the receipt of hazardous waste in conditions R-45, R-51. Also, consider requiring Thermaldyne to include similar prohibitions and procedures in their Comprehensive Operation Plan and Waste Acceptance Plan, permit application attachments 35 and 58, that are incorporated by reference in the Draft SW Permit.

Please remove from the LDEQ documents the following paragraph that is present in the "Issuance of Standard Permit" letter, in the "Attachment 2 Fact Sheet," and Specific Requirement R-53.

> *In accordance with LAC 33:V.105.D.1.l.i, oil-bearing secondary materials that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911) are not solid wastes the purposes of the hazardous waste regulations. However, residuals generated from processing or recycling materials excluded under this Subsection, where such materials as generated would*

have otherwise met a listing under LAC 33:V.Chapter 49, are designated as F037 listed wastes when disposed of or intended for disposal. The facility shall store and dispose of these wastes in accordance with all applicable hazardous waste regulations.

My request for removal of this paragraph is not because it is incorrect. LDEQ has provided an essentially correct statement regarding the recycling of oil bearing hazardous secondary materials at a petroleum refinery. However, considering that the Thermaldyne facility is clearly not a petroleum refinery, the inclusion of this section gives the impression that LDEQ agrees with Thermaldyne's incorrect and inappropriate claim. As strongly stated in EPA's letter to LDEQ (attached), Thermaldyne's facility is not a petroleum refinery and if they receive these hazardous wastes from petroleum refineries they would require a RCRA hazardous waste permit.

SW Permit "Inventories" form TPOR0195

The weekly maximum capacity of the facility is given as 9800 wet tons/wk. Please include a footnote or some other operating or recordkeeping requirement that this capacity is for all solid waste received at the facility, to include both liquid solid waste (slurries of water, solids and oil) for centrifuge processing, and solid waste for TDU processing.

It is noted that these waste materials will be delivered to the Thermaldyne facility by truck. If the average net weight of waste delivered per truck load is 15 tons, then this means that approximately 650 trucks per week will be delivered to the facility. That is a very large amount of truck traffic, especially considering that these will all be regulated DOT hazardous materials shipment. Has LDEQ considered the impact of this large increase in the quantity of hazardous material truck traffic on the roads in the Parish?

SW Permit Attachment 1 – Items Incorporated by Reference
Thermaldyne Attachment 35 Comprehensive Operation Plan

Page 1. Section 1.0. Acceptable Types of Waste

A bullet list is provided that includes *Oily sludge waste generated at oil refineries and petrochemical plants.*

It is noted that virtually all of this type of waste that is generated at an oil refinery is either a listed hazardous waste (K048-K052, K169-K172, F037, F038) or characteristically hazardous waste (D001, D018). These materials may be classified as oil bearing hazardous secondary materials by the refinery. Similarly most of these "oily sludge wastes" from a petrochemical plant are characteristically hazardous waste (D001, D018). Their "recycling" at an offsite waste treatment facility such as Thermaldyne, that combusts a portion of the solid waste in the recycling unit, requires that Thermaldyne have a hazardous waste operating permit allowing the regulated hazardous waste thermal treatment of these hazardous secondary materials.

Consider editing the second bullet list to say:

The facility will not accept:

- *Hazardous waste, hazardous secondary materials, and oil bearing hazardous secondary materials.*

Page 4. Section 6. Waste Minimization

The condensed desorbed materials will be stored temporarily on-site before being sent for recovery by the generator.

Presumably the "condensed desorber materials" are a recyclable oil product. Multiple generators are presumably sending solid waste to this facility. Procedures for return to the generator are not further defined, such as how to segregate one generator's oil from another. Further, if a generator does not accept recycled oil back from Thermaldyne, then it is possible that this oil would be a newly generated waste, subject to hazardous waste characterization.

Neither the Operating Plan nor the Waste Acceptance Plan provided by Thermaldyne include any provisions for testing of the "recycled oil" to establish that it is either not a hazardous waste, or derived from a hazardous waste. If the "recovered oil" is to be burned as a fuel, that may affect the status of the secondary materials that are received at the facility and render them hazardous wastes, as opposed to recyclable secondary materials. If the recovered oil is to be burned as a fuel, proper notification should be provided to LDEQ of that practice so that appropriate hazardous waste management determinations can be reviewed. As a minimum LDEQ should require that Thermaldyne manage the recovered oil material as a valuable product, protect it securely, prevent it from becoming spilled or discarded or placed on the land, establish contracts for its sale that incorporate consensus product quality specifications, and similar practices to establish that the material is not a waste. Otherwise, a new waste determination should be made for the appropriate management of the "recovered oil", using hazardous waste characteristic criteria. If the material exhibits a hazardous waste characteristic then it must be appropriately stored on site, manifested, and disposed at properly permitted facilities. At 1400 ton/day of permitted capacity, if the oil content of the solid waste materials is 15%, then the facility would be generating 50,000 gallons of "recovered oil" per day. This quantity of material could quickly become a problem.

Specific procedures need to be included for the management and waste characterization of the "recovered oil" either in this attachment, or the WAP in attachment 58.

Page 6. "Non-Recyclable Waste"

This section includes a statement that *the water generated will then go through the water*

treatment process with the other wastewaters gathered from the facility. The cleaned water will exit the facility through its permitted outfall.

It is noted that no permit can be found for any "permitted outfall" in the LDEQ EDMS documents for Thermaldyne (or their predecessor company Port Allen Land). At the present time, it does not appear that Thermaldyne has approval to discharge any treated waste water or storm water to a surface water at the site.

SW Permit Attachment 1 – Items Incorporated by Reference
Thermaldyne Attachment 58 Waste Acceptance Plan

Page 2.

> *The highest priority for this facility is ensuring waste accepted from a 3rd party is not hazardous waste. Wastes that do not meet regulatory requirements will not be accepted for treatment by Thermaldyne. The hazardous waste identification (HWID) process is crucial for maintaining and managing this system. Correctly determining whether a waste meets The Resource and Conservation and Recovery Act (RCRA) definition of hazardous waste is essential to determining how the waste must be managed and whether the waste is to be accepted or rejected. Before waste is characterized as hazardous or nonhazardous it must first be characterized as solid waste. This facility will do so by following the definition of a solid waste from section 261.2 of RCRA Regulations.*

The Thermaldyne facility is a recycling facility. It is not located at the generator's site, nor is it a "closely held" entity of the generator. As such, the waste determination is made by the generators, not Thermaldyne. Thermaldyne has a duty to verify that the generator has properly characterized their waste and is not inappropriately offering prohibited hazardous waste for recycling at Thermaldyne.

Thermaldyne uses a TDU that is a thermal treatment unit for waste reclamation. The facility combusts a non-condensible portion of the waste received in an associated Thermal Oxidizer. When hazardous wastes are reclaimed, they remain hazardous waste under the EPA definition of solid waste (DSW) at 40 CFR 261.2. Hazardous waste reclamation facilities that combust a portion of the hazardous waste require a hazardous waste permit under the LDEQ regulations that implement EPA's RCRA regulations. Those permits contain substantial siting criteria, technical standards, operation and recordkeeping, and undergo an administrative process embracing substantial public participation. The Thermaldyne facility meets none of those requirements and is consequently unsuitable for either hazardous waste or hazardous secondary material reclamation.

This section should include a prohibition on the receipt of hazardous secondary materials, including Oil Bearing Hazardous Secondary Materials, along with the prohibition on the receipt of hazardous waste as required by the permit conditions. Recommend rewriting similar to as

follows:

> *The highest priority for this facility is ensuring waste accepted from a 3rd party is not hazardous waste, hazardous secondary materials, or oil bearing hazardous secondary materials. Wastes that do not meet regulatory requirements will not be accepted for treatment by Thermaldyne. The hazardous waste identification (HWID) process is crucial for maintaining and managing this system. Correctly determining whether a waste meets The Resource and Conservation and Recovery Act (RCRA) definition of hazardous waste is essential to determining how the waste must be managed and whether the waste is to be accepted or rejected. Before waste is characterized by the generator as hazardous or nonhazardous it must first be characterized as solid waste. This facility will ~~do so~~ review the generator's waste determination ~~by following the definition of a solid waste from section 261.2 of RCRA Regulations.~~ to confirm that materials offered for recycling at Thermaldyne are neither hazardous waste, nor hazardous secondary materials.*

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

DEC 20 2016

Estuardo Silva
Administrator Waste Permits Division
Louisiana Department of Environmental Quality
602 N. Fifth Street
Baton Rouge, Louisiana 70802

RE: United States Environmental Protection Agency (EPA) Region 6 Review of the Solid Waste Standard Permit Application (January 8, 2016) for the Thermaldyne, LLC facility located in Port Allen, West Baton Rouge Parish, Louisiana; EPA ID ARD089234884; Permit No. 11H-RN2.

Dear Mr. Silva:

We have completed our review of the solid waste permit application for the facility referenced above. In the application, the facility states that it is a refinery (SIC code 2911) and claims an exclusion for handling oil-bearing secondary materials based on L.A.C. 33:V.105.D.1.i. The federal reference for this exclusion is 40 CFR 261.4(a)(12)(i).

Based on our review of the application and the facility, we are of the opinion that this facility is not a refinery and would not qualify for the exclusion referenced above. Specifically, we do not find that the facility is engaged in processes that would be indicative of a refinery, such as using crude oil for fractionation, distillation, or cracking for the production of gasoline, kerosene, residual fuel oils, and lubricants. The Background Listing Document examined numerous refineries and their operations in order to establish the exclusion identified about. All the refineries reviewed shared at least two elements: the facility used (1) crude oil to develop a (2) finished product. This facility does neither. Rather, the facility is receiving a hazardous secondary material from a refinery to treat and recover an oil product that will be sent back to a refinery for further processing. As such, we would expect the facility to be permitted with a RCRA Subpart C Hazardous Waste Permit for the thermal treatment of a hazardous material.

Furthermore, generators will have to manifest this material as a hazardous waste with the responsibility to send it to a properly permitted RCRA facility for treatment. Failure to do so may result in an enforcement action on the generator of the hazardous waste.

If you have any questions regarding this letter, please contact me at (214) 665-6669.

Sincerely,

Kishor Fruitwala, Ph.D., P.E.
Chief, RCRA Permits Section
Multimedia Division, EPA Region 6

cc: Ann Finney (LDEQ)

Message

From: Carl Palmer [cpalmer@tdxassociates.com]
Sent: 1/23/2017 4:53:50 PM
To: deq.publicnotices@la.gov
CC: ann.finney@la.gov; Spalding, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17fb5ab7a65145d4bde2327fc6d02378-Spalding, Susan]; Tidmore, Guy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6e9af087a1ce4703b25a4a8e6fa048dd-Tidmore, Guy]; Fruitwala, Kishor [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7a19009ba86a4236b97131d5d16f2fae-Fruitwala, Kishor]; Luschek, Robert [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd6769c1089e464ebe6e5f345960a0cf-Luschek, Robert]; Pearson, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d10433f23dd64bd2a3efc03d6367856c-Pearson, Evan]; Payne, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=61b3204a683041079512b122c580a569-Payne, Jame]; Price, Lisa [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0b4a7d6cc6094c868ffef7fcf3225245-Price, Lisa]; Jones, Bruced [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9026926c877140cbae1d4c0739729813-Jones, Bruced]; Devlin, Betsy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b76a4bf5afc84459a6bf2a6a4645f40f-BDEVLIN]; Elliott, Ross [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33cb08013cc94c21a3e3236dbad4c4a4-REELLIOT]; Atagi, Tracy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ebcfd670077440dfb63a691749f20af2-TATAGI]; stegner.wren@epa.gov
Subject: Comments on Thermaldyne 12/22/2016 draft Solid Waste Permit Activity Number PER20160001
Attachments: Thermaldyne_TDU_Draft2_SW_Permit_Comments_20170123.pdf

Please accept my attached comments on the subject draft solid waste permit.

--

Carl R. Palmer, P.E.
TD*X Associates LP
(919) 349-1583 mobile
http://www.tdxassociates.com

TD*X Associates LP
148 South Dowlen Road, PMB 700
Beaumont, TX 77707

From the Desk of
Carl R. Palmer
TD*X Associates, LLC
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Research Triangle Park, NC 27709
ph (919) 349-1583
FAX (509) 692-8791
E-mail: cpalmer@tdxassociates.com

January 23, 2017

Louisiana Department of Environmental Quality
Public Participation Group
PO Box 4313
Baton Rouge, LA 70821

VIA Email. Deq.publicnotices@la.gov

SUBJECT: AI Number 198467,
Activity Number PER20160001

Dear Sir or Madame;

I have reviewed the December 22, 2016 Draft Solid Waste Standard Permit that approves the Thermaldyne LLC request to install a thermal desorption unit (TDU) and three centrifuges for the processing of oily solid wastes. This letter presents my comments on this most recent Draft permit. I am also providing comments on Thermaldyne's permit application documents as it relates to this matter.

The present draft permit provides minor revisions to the Department's previous draft that was published in May 2016. After that draft was published, Thermaldyne changed a US Government tax reporting code to change the designation of their principal activity to be SIC Code 2911 *Petroleum Refinieries*. These SIC codes are primarily used for tracking business economic activity in the US and do not undergo any review as to their suitability in regards to a particular business' claim. To be clear, the proposed Thermaldyne facility does NOT primarily or even in any way engage *in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, and lubricants, through fractionation or straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes,* which is the exact literally prescribed definition of a 2911 facility. Any designation of the waste treatment activities at Thermaldyne that considers the facility to be a petroleum refinery is a sham, and is clearly a direct avoidance of the substantial and appropriate regulations enacted regarding the thermal treatment of regulated hazardous waste materials.

I have attached a letter that provides a very clear determination from USEPA in regard to this matter. Please refer to Attachment 1, a December 20, 2016 letter from USEPA Region 6 to Estuardo Silva at LDEQ. USEPA does not consider the Thermaldyne facility to be a petroleum refinery, and clearly states that waste treatment at Thermaldyne of hazardous secondary materials from petroleum refineries requires a RCRA hazardous waste permit.

If as stated in their June 15, 2016 letter to the Department, Thermaldyne intends to receive "excluded" oil bearing hazardous secondary materials from petroleum refineries and reclaim them to produce "residual fuel oils," this Thermaldyne statement confirms that their facility is indeed performing a regulated hazardous waste facility, and not engaged in "petroleum refining." As stated in the 1998 final rulemaking for the EPA's longstanding "petroleum refinery" exclusion from hazardous waste, that exclusion applies to oil bearing hazardous secondary materials that are *immediately recovered and used in the refining process.* The Thermaldyne facility includes no "refining process" but rather includes only a thermal desorption unit for waste treatment and three centrifuges for separation of oily waste water and sludge.

Generation of a residual fuel oil by thermal desorption treatment of refinery OBHSM at a reclamation facility that is separate from both the petroleum refinery generating the OBHSM and a refinery that is "inserting the recovered oil into the refining process" is a regulated hazardous waste thermal treatment activity. That is particularly true when the waste treatment activity is performed offsite from the generating petroleum refinery and the recovered oil is used as a residual fuel oil that is burned as a fuel.

Thermaldyne is proposing to install a rotary kiln thermal desorption unit at their recycling facility to process oily sludges from petroleum refineries and petrochemical plants that would normally be considered regulated hazardous waste. However, by claiming that the rotary kiln is really a "petroleum refinery" they are avoiding LDEQ, USEPA and public review for siting a new hazardous waste treatment facility. They are also avoiding being subject to numerous technical standards meant to protect both the environment and the public from releases of hazardous waste, as well as strict emission limits for air pollution from hazardous waste thermal treatment.

When Thermaldyne first proposed this facility in 2015 they made a promise to exclude hazardous wastes from their recycling activity. Now, with a last minute paperwork change they are trying to get permission to process tens of thousands of tons per year of toxic and flammable wastes from petroleum refineries and petrochemical plants. LDEQ and EPA normally require this type of hazardous waste thermal treatment facility to undergo years of exhaustive study and to install protections including engineered equipment and barriers to:

- verify that the facility meets requirements to prevent and contain spills,
- characterize waste prior to receipt,
- conditions and procedures to track materials to assure safe and legal treatment and disposal,

- control air emissions from the hazardous waste thermal treatment to extremely low levels for chemicals like hydrochloric acid, dioxins, mercury, lead, cadmium, arsenic, chromium, beryllium, and uncombusted toxic organic chemicals like benzene and benzo-a-pyrene,
- establish detailed procedures to guarantee that waste materials are properly disposed to prevent illegal mixing into commercial products or pollution of the land

If LDEQ and EPA accept Thermaldyne's claim that this waste processing facility is really a "petroleum refinery" they will allow Thermaldyne to avoid numerous hazardous waste laws. Thermaldyne will circumvent the protections provided by these hazardous waste laws and regulations. This will set a significant precedent in both Louisiana and the Gulf Coast. It is predictable considering the extensive refining and petrochemical industry in the region that Louisiana could become the host to more and more of these sham recycling facilities.

Detailed Analysis of Thermaldyne's "Petroleum Refinery" Claim

In order for Thermaldyne's claim to be successful, it must show compliance with the regulatory exclusions in 40 CFR 261.4(a)(12)(i) and (ii) relating to oil-bearing hazardous secondary materials that are generated at a petroleum refinery and recovered oil; and in 40 CFR 261.4(a)(18) if hazardous secondary materials are reclaimed from "associated petrochemical manufacturing facilities." Thermaldyne's principal hurdle remains to be showing that their facility comes within the definition of "petroleum refinery," and in the case of petrochemical waste reclamation that the oil generated from a petrochemical manufacturing facility is associated with a facility that is physically co-located with a petroleum refinery.

Section 261.4(a)(12)(i) excludes from hazardous waste regulation oil-bearing hazardous secondary materials that are generated at a petroleum refinery (SIC 2911) and are inserted into the petroleum refining process unless the material is placed on the land, or speculatively accumulated before being recycled. This section allows oil-bearing hazardous secondary materials to be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery and still be excluded from hazardous waste regulation.

Thus, the exclusion allows for refinery oil-bearing hazardous secondary material to be sent off-site for processing. However, the oil-bearing material must either be generated by a petroleum refinery or sent off-site to another petroleum refinery. There is no definition of the term "petroleum refinery" in 40 CFR 261; however, EPA defined the term in the preamble to a proposed rule amending the exclusion:

> Petroleum refineries are defined as "establishments primarily engaged in the production of gasoline, distillate fuel oils, residual fuel oils, naptha, liquefied refinery gases, and lubricants through the integration of fractionation and/or straight distillation of crude oil, re-distillation of unfinished petroleum derivatives, cracking, or other processes" (Office of Management and Budget, 1987). 60 *Fed. Reg.* 57750 (Nov. 20, 1995).

It is clear from this preamble definition that petroleum refineries must generally be engaged in the processing of crude oil. This criterion clearly disqualifies Thermaldyne's proposed facility from consideration as a petroleum refinery. The portion of the above definition specifying "straight distillation of crude oil" or "re-distillation of unfinished petroleum derivatives" is especially important as it relates to Thermaldyne, given that their proposed installation does not include a crude oil distillation column, or even a remotely similar process, to justify consideration of their facility as a petroleum refinery. This portion of EPA's definition requires either distillation of crude oil or re-distillation of "unfinished petroleum derivatives." Distillation at Thermaldyne's facility must be either distillation of crude oil or re-distillation of unfinished petroleum derivatives. Thermaldyne proposes neither, and therefore they would not be considered a petroleum refinery and Thermaldyne's activity is not eligible for an exclusion under 40 CFR 261.4(a)(12)(i).

Secondly, under 40 CFR 261.4(a)(12)(ii), in order for the recovered oil produced by Thermaldyne to be excluded from regulation, it must be "recycled in the same manner and with the same conditions" described in 40 CFR 261.4(a)(12)(i). Therefore, if Thermaldyne fails to meet the criteria in paragraph (i), the oil recovered from that process will not be excluded from regulation either. Paragraph (ii) further provides that "[r]ecovered oil is oil that has been reclaimed from secondary materials . . . generated from *normal* petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incidents thereto" (emphasis added). The use of the word "normal" to describe the refining practices from which the recovered oil must be generated should dictate strict application of EPA's definition of "petroleum refinery" discussed above, rather than a loosely-held variation that would allow mere construction of a distillation column to determine regulatory status. Applying a strict definition is especially important in this context where so much rides on this determination: depending on the outcome, the facility will either be fully regulated or completely excluded from regulation under RCRA.

In the broad descriptions included in their permit application document, Thermaldyne also proposes to reclaim secondary materials from petrochemical plants. The regulatory status of this activity is governed by 40 CFR 261.4(a)(18), which provides an exclusion for petrochemical recovered oil from "an associated organic chemical manufacturing facility, where oil is to be inserted into the petroleum refining process . . . along with normal petroleum refinery process streams." First, notice that this exclusion is contingent on insertion of petrochemical materials into a petroleum refining process that process "normal" petroleum refinery process streams. Thus, in order for Thermaldyne to conform to this exclusion, it must be a petroleum refinery, as discussed above. Second, the refining process must involve "normal petroleum refinery process streams." It appears that Thermaldyne could be disqualified on both grounds by failing to conform to EPA's definition of petroleum refinery and by not processing materials that are "normally" considered to be petroleum refinery process streams.

In addition, paragraph (i) of this section limits the exclusion to oil that is hazardous only because it exhibits the characteristic of ignitability and/or toxicity for benzene. This condition would limit the types of petrochemical wastes that could be reclaimed at Thermaldyne, provided that it

could otherwise come within this exclusion. Paragraph (ii) of this section further limits applicability of the exclusion by defining "an associated organic chemical manufacturing facility" as a facility that (1) has an SIC code of 2869, and (2) is physically co-located with a petroleum refinery and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. Thus, in order to be able to process "excluded" petrochemical waste, Thermaldyne's "refinery" must be considered to be co-located with the petrochemical plant from which it is receiving the material. Even if EPA or LDEQ determines that Thermaldyne is a petroleum refinery, Thermaldyne could not process petrochemical wastes except from petrochemical plants with which it is co-located. In a preamble to the final rule promulgating this exclusion, EPA stated that "co-located" means "that the petroleum refinery and the organic chemical manufacturing facility are physically adjacent to one another, or otherwise share a common boundary." 63 *Fed. Reg.* 42130 (Aug. 6, 1998). This requirement severely curtails eligibility for this exclusion.

In conclusion, given that the Thermaldyne facility meets neither the definition of a "petroleum refinery" nor is it co-located with an "associated petrochemical facility" receipt and reclamation of hazardous secondary materials from either of these facilities would constitute regulated hazardous waste treatment. This would require a full RCRA Part B permit and cannot be legally performed under the proposed Solid Waste Permit for recycling. Any petroleum refinery or petrochemical plant generator of these hazardous secondary materials that shipped them to Thermaldyne for reclamation would be in violation of RCRA. Thermaldyne receiving them, storing them, subjecting them to reclamation by centrifuging or thermal desorption, and selling or shipping the reclaimed oil from them would all be activities that are in direct violation of RCRA.

Restatement of Previous Comments

In my June 30, 2016 comment letter to the Department I made numerous comments on the permit and permit application. The majority of those remain my comments, and have not been withdrawn. For completeness, I am repeating them, with expanded and slightly revised comments based on changes made to the Solid Waste Permit in this latest publication.

Both the draft Solid Waste Permit and the Thermaldyne permit application state that the facility is prohibited from accepting hazardous waste materials for processing. This prohibition is clearly stated by both LDEQ and Thermaldyne, without nuance or qualification. LDEQ further states both in a letter to Thermaldyne and in the permit fact sheet that no variances are being requested or approved as part of this solid waste permit. All of those facts are essential, because the processing of hazardous waste materials, including hazardous secondary materials, would be unauthorized and against LDEQ and EPA regulations because this facility does not meet the technical and administrative requirements for processing either of those material types.

This facility uses a TDU that is a thermal treatment unit for waste reclamation. The facility combusts a non-condensable portion of the waste received in an associated Thermal Oxidizer. When hazardous wastes are reclaimed, they remain hazardous waste under the EPA definition of

solid waste (DSW) at 40 CFR 261.2. Hazardous waste reclamation facilities require a hazardous waste permit under the LDEQ regulations that implement EPA's RCRA regulations. Those permits contain numerous siting criteria, technical standards, operation and recordkeeping requirements, and undergo an administrative process embracing substantial public participation. The Thermaldyne facility meets none of those requirements and is consequently unsuitable for either hazardous waste or hazardous secondary material reclamation.

On another point, the Thermaldyne facility includes three centrifuges for the processing of solid waste liquids. These units will generate large quantities of waste water contaminated by pollutants, including sediment, free oil, volatile organic compounds and toxic metals. The Operating Plan states that this water will be discharged to "the outfall." However, Thermaldyne has not requested or received any permission from LDEQ for a surface water discharge of this waste water. The Operating Plan is made a permit condition by reference in this Solid Waste Permit. However, that inclusion by LDEQ does not constitute permission for an unpermitted surface water discharge. Also, rainwater that falls in the waste processing area will become contaminated by pollutants, including sediment, free oil, volatile organic compounds and toxic metals. No storm water pollution prevention plan or discharge permit has been requested from or granted by LDEQ. In the absence of these permits and approvals, these waste waters would need to be shipped offsite for appropriate waste disposal. Their discharge to the local surface waters that include direct flows to the Mississippi river are unauthorized and inappropriate.

I have an additional comment related to the fact that Thermaldyne appears to be planning on generating a recycled oil from the processing of regulated solid waste liquids and solids in the TDUs and centrifuges. The Department should implement specific conditions of operation for both the TDUs and the centrifuges to preclude the disposal of hazardous waste in the "recycled oil" that is generated from these units. Neither the Operating Plan nor the Waste Acceptance Plan provided by Thermaldyne include any provisions for testing of the "recycled oil" to establish that it is either not a hazardous waste, or derived from a hazardous waste. If the "recovered oil" is to be burned as a fuel that may affect the status of the secondary materials that are received at the facility and render them hazardous wastes, as opposed to recyclable secondary materials. If the recovered oil is to be burned as a fuel, proper notification should be provided to LDEQ of that practice so that appropriate hazardous waste management determinations can be reviewed. As a minimum LDEQ should require that Thermaldyne manage the recovered oil material as a valuable product, protect it securely, prevent it from becoming spilled or discarded or placed on the land, establish contracts for its sale that incorporate consensus product quality specifications, and similar practices to establish that the material is not a waste. These conditions would also prevent "sham recycling" of hazardous waste from being performed by Thermaldyne. Otherwise, a new waste determination should be made for the appropriate management of the "recovered oil," using hazardous waste characteristic criteria. If the material exhibits a hazardous waste characteristic then it must be appropriately stored on site, manifested, and disposed at properly permitted facilities. At 1,400 ton/day of permitted capacity, if the oil content of the solid waste materials is 15%, then the facility would be generating 50,000 gallons of "recovered oil" per day. This quantity of material could quickly become a problem.

I am also providing detailed itemized comments on both the published Draft Permit as well as the Thermaldyne permit application documents. These comments are provided on the following pages.

It is appropriate for the Department to grant Themaldyne approval to receive, recycle and process non-hazardous oil bearing materials. The source of those materials must be exclusively from non-hazardous waste sources. Appropriate sources would be excluded and non-hazardous oily materials from petroleum exploration and production (E&P) operations, and similarly regulated materials. It is completely inappropriate through this Solid Waste Permit for the Department to grant approval for Thermaldyne to receive or process any hazardous waste materials, including oil bearing hazardous secondary materials from petroleum refineries.

Sincerely,

Carl R. Palmer 2017.01.23 11:50:32 -05'00'

Carl R. Palmer, P.E.

Cc:	Ann Finney	LDEQ (via email)
	Susan Spalding	USEPA Region 6 (via email)
	Guy Tidmore	USEPA Region 6 (via email)
	Evan Pearson	USEPA Region 6 (via email)
	Dr. Kishor Fuitwala	USEPA Region 6 (via email)
	Robert Luschek	USEPA Region 6 (via email)
	Wren Stegner	USEPA Region 6 (via email)
	Jim Payne	USEPA Region 6 (via email)
	Lisa Price	USEPA Region 6 (via email)
	Bruce Jones	USEPA Region 6 (via email)
	Betsy Devlin	USEPA HQ (via email)
	Ross Elliott	USEPA HQ (via email)
	Traci Atagi	USEPA HQ (via email)

ITEMIZED COMMENTS ON LDEQ DRAFT PERMIT

Conditions R-45, R-51
Issuance of Standard Permit Letter to Richard A. Cates

These three instances clearly state that the facility is prohibited from accepting hazardous waste materials for processing. This prohibition is also included in the Comprehensive Operating Plan and Waste Acceptance Plan that are incorporated by reference in Attachment 1. This prohibition of hazardous waste receipt is clearly stated by both LDEQ and Thermaldyne, without nuance or qualification. LDEQ further states both in a letter to Thermaldyne and in the permit fact sheet that no variances are being requested or approved as part of this solid waste permit. All of those facts are essential, because the processing of hazardous waste materials, including hazardous secondary materials, would be unauthorized and against LDEQ and EPA regulations because this facility does not meet the technical and administrative requirements for processing either of those material types.

The Thermaldyne TDU combusts a portion of the solid waste that is processed in the associated thermal oxidizer. If either hazardous waste, or hazardous secondary materials are received and placed in the TDU, that would constitute regulated hazardous waste thermal treatment. That determination remains the same regardless of the claim that recycling is being performed, or that recycled oil is being returned to the generator or sold as a recycled product. No solid waste permit, or even a variance can authorize the unpermitted thermal treatment of hazardous waste. A RCRA hazardous waste permit would be required for the Thermaldyne facility in that case. This regulatory approval process is mandatory, and LDEQ would require Thermaldyne to submit a full RCRA hazardous waste permit application meeting all of the technical and administrative requirements.

Consider including a prohibition on the receipt of hazardous secondary materials, including Oil Bearing Hazardous Secondary Materials, along with the prohibition on the receipt of hazardous waste in conditions R-45, R-51. Also, consider requiring Thermaldyne to include similar prohibitions and procedures in their Comprehensive Operation Plan and Waste Acceptance Plan, permit application attachments 35 and 58, that are incorporated by reference in the Draft SW Permit.

Please remove from the LDEQ documents the following paragraph that is present in the "Issuance of Standard Permit" letter, in the "Attachment 2 Fact Sheet," and Specific Requirement R-53.

> *In accordance with LAC 33:V.105.D.1.l.i, oil-bearing secondary materials that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911) are not solid wastes the purposes of the hazardous waste regulations. However, residuals generated from processing or recycling materials excluded under this Subsection, where such materials as generated would*

have otherwise met a listing under LAC 33:V.Chapter 49, are designated as F037 listed wastes when disposed of or intended for disposal. The facility shall store and dispose of these wastes in accordance with all applicable hazardous waste regulations.

My request for removal of this paragraph is not because it is incorrect. LDEQ has provided an essentially correct statement regarding the recycling of oil bearing hazardous secondary materials at a petroleum refinery. However, considering that the Thermaldyne facility is clearly not a petroleum refinery, the inclusion of this section gives the impression that LDEQ agrees with Thermaldyne's incorrect and inappropriate claim. As strongly stated in EPA's letter to LDEQ (attached), Thermaldyne's facility is not a petroleum refinery and if they receive these hazardous wastes from petroleum refineries they would require a RCRA hazardous waste permit.

SW Permit "Inventories" form TPOR0195

The weekly maximum capacity of the facility is given as 9800 wet tons/wk. Please include a footnote or some other operating or recordkeeping requirement that this capacity is for all solid waste received at the facility, to include both liquid solid waste (slurries of water, solids and oil) for centrifuge processing, and solid waste for TDU processing.

It is noted that these waste materials will be delivered to the Thermaldyne facility by truck. If the average net weight of waste delivered per truck load is 15 tons, then this means that approximately 650 trucks per week will be delivered to the facility. That is a very large amount of truck traffic, especially considering that these will all be regulated DOT hazardous materials shipment. Has LDEQ considered the impact of this large increase in the quantity of hazardous material truck traffic on the roads in the Parish?

SW Permit Attachment 1 – Items Incorporated by Reference
Thermaldyne Attachment 35 Comprehensive Operation Plan

Page 1. Section 1.0. Acceptable Types of Waste

A bullet list is provided that includes *Oily sludge waste generated at oil refineries and petrochemical plants.*

It is noted that virtually all of this type of waste that is generated at an oil refinery is either a listed hazardous waste (K048-K052, K169-K172, F037, F038) or characteristically hazardous waste (D001, D018). These materials may be classified as oil bearing hazardous secondary materials by the refinery. Similarly most of these "oily sludge wastes" from a petrochemical plant are characteristically hazardous waste (D001, D018). Their "recycling" at an offsite waste treatment facility such as Thermaldyne, that combusts a portion of the solid waste in the recycling unit, requires that Thermaldyne have a hazardous waste operating permit allowing the regulated hazardous waste thermal treatment of these hazardous secondary materials.

Consider editing the second bullet list to say:

The facility will not accept:

- *Hazardous waste, hazardous secondary materials, and oil bearing hazardous secondary materials.*

Page 4. Section 6. Waste Minimization

The condensed desorbed materials will be stored temporarily on-site before being sent for recovery by the generator.

Presumably the "condensed desorber materials" are a recyclable oil product. Multiple generators are presumably sending solid waste to this facility. Procedures for return to the generator are not further defined, such as how to segregate one generator's oil from another. Further, if a generator does not accept recycled oil back from Thermaldyne, then it is possible that this oil would be a newly generated waste, subject to hazardous waste characterization.

Neither the Operating Plan nor the Waste Acceptance Plan provided by Thermaldyne include any provisions for testing of the "recycled oil" to establish that it is either not a hazardous waste, or derived from a hazardous waste. If the "recovered oil" is to be burned as a fuel, that may affect the status of the secondary materials that are received at the facility and render them hazardous wastes, as opposed to recyclable secondary materials. If the recovered oil is to be burned as a fuel, proper notification should be provided to LDEQ of that practice so that appropriate hazardous waste management determinations can be reviewed. As a minimum LDEQ should require that Thermaldyne manage the recovered oil material as a valuable product, protect it securely, prevent it from becoming spilled or discarded or placed on the land, establish contracts for its sale that incorporate consensus product quality specifications, and similar practices to establish that the material is not a waste. Otherwise, a new waste determination should be made for the appropriate management of the "recovered oil", using hazardous waste characteristic criteria. If the material exhibits a hazardous waste characteristic then it must be appropriately stored on site, manifested, and disposed at properly permitted facilities. At 1400 ton/day of permitted capacity, if the oil content of the solid waste materials is 15%, then the facility would be generating 50,000 gallons of "recovered oil" per day. This quantity of material could quickly become a problem.

Specific procedures need to be included for the management and waste characterization of the "recovered oil" either in this attachment, or the WAP in attachment 58.

Page 6. "Non-Recyclable Waste"

This section includes a statement that *the water generated will then go through the water*

treatment process with the other wastewaters gathered from the facility. The cleaned water will exit the facility through its permitted outfall.

It is noted that no permit can be found for any "permitted outfall" in the LDEQ EDMS documents for Thermaldyne (or their predecessor company Port Allen Land). At the present time, it does not appear that Thermaldyne has approval to discharge any treated waste water or storm water to a surface water at the site.

SW Permit Attachment 1 – Items Incorporated by Reference
Thermaldyne Attachment 58 Waste Acceptance Plan

Page 2.

> *The highest priority for this facility is ensuring waste accepted from a 3rd party is not hazardous waste. Wastes that do not meet regulatory requirements will not be accepted for treatment by Thermaldyne. The hazardous waste identification (HWID) process is crucial for maintaining and managing this system. Correctly determining whether a waste meets The Resource and Conservation and Recovery Act (RCRA) definition of hazardous waste is essential to determining how the waste must be managed and whether the waste is to be accepted or rejected. Before waste is characterized as hazardous or nonhazardous it must first be characterized as solid waste. This facility will do so by following the definition of a solid waste from section 261.2 of RCRA Regulations.*

The Thermaldyne facility is a recycling facility. It is not located at the generator's site, nor is it a "closely held" entity of the generator. As such, the waste determination is made by the generators, not Thermaldyne. Thermaldyne has a duty to verify that the generator has properly characterized their waste and is not inappropriately offering prohibited hazardous waste for recycling at Thermaldyne.

Thermaldyne uses a TDU that is a thermal treatment unit for waste reclamation. The facility combusts a non-condensible portion of the waste received in an associated Thermal Oxidizer. When hazardous wastes are reclaimed, they remain hazardous waste under the EPA definition of solid waste (DSW) at 40 CFR 261.2. Hazardous waste reclamation facilities that combust a portion of the hazardous waste require a hazardous waste permit under the LDEQ regulations that implement EPA's RCRA regulations. Those permits contain substantial siting criteria, technical standards, operation and recordkeeping, and undergo an administrative process embracing substantial public participation. The Thermaldyne facility meets none of those requirements and is consequently unsuitable for either hazardous waste or hazardous secondary material reclamation.

This section should include a prohibition on the receipt of hazardous secondary materials, including Oil Bearing Hazardous Secondary Materials, along with the prohibition on the receipt of hazardous waste as required by the permit conditions. Recommend rewriting similar to as

follows:

> *The highest priority for this facility is ensuring waste accepted from a 3rd party is not hazardous waste, hazardous secondary materials, or oil bearing hazardous secondary materials. Wastes that do not meet regulatory requirements will not be accepted for treatment by Thermaldyne. The hazardous waste identification (HWID) process is crucial for maintaining and managing this system. Correctly determining whether a waste meets The Resource and Conservation and Recovery Act (RCRA) definition of hazardous waste is essential to determining how the waste must be managed and whether the waste is to be accepted or rejected. Before waste is characterized by the generator as hazardous or nonhazardous it must first be characterized as solid waste. This facility will ~~do so~~ review the generator's waste determination ~~by following the definition of a solid waste from section 261.2 of RCRA Regulations.~~ to confirm that materials offered for recycling at Thermaldyne are neither hazardous waste, nor hazardous secondary materials.*

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

DEC 20 2016

Estuardo Silva
Administrator Waste Permits Division
Louisiana Department of Environmental Quality
602 N. Fifth Street
Baton Rouge, Louisiana 70802

RE: United States Environmental Protection Agency (EPA) Region 6 Review of the Solid Waste Standard Permit Application (January 8, 2016) for the Thermaldyne, LLC facility located in Port Allen, West Baton Rouge Parish, Louisiana; EPA ID ARD089234884; Permit No. 11H-RN2.

Dear Mr. Silva:

We have completed our review of the solid waste permit application for the facility referenced above. In the application, the facility states that it is a refinery (SIC code 2911) and claims an exclusion for handling oil-bearing secondary materials based on L.A.C. 33:V.105.D.1.i. The federal reference for this exclusion is 40 CFR 261.4(a)(12)(i).

Based on our review of the application and the facility, we are of the opinion that this facility is not a refinery and would not qualify for the exclusion referenced above. Specifically, we do not find that the facility is engaged in processes that would be indicative of a refinery, such as using crude oil for fractionation, distillation, or cracking for the production of gasoline, kerosene, residual fuel oils, and lubricants. The Background Listing Document examined numerous refineries and their operations in order to establish the exclusion identified about. All the refineries reviewed shared at least two elements: the facility used (1) crude oil to develop a (2) finished product. This facility does neither. Rather, the facility is receiving a hazardous secondary material from a refinery to treat and recover an oil product that will be sent back to a refinery for further processing. As such, we would expect the facility to be permitted with a RCRA Subpart C Hazardous Waste Permit for the thermal treatment of a hazardous material.

Furthermore, generators will have to manifest this material as a hazardous waste with the responsibility to send it to a properly permitted RCRA facility for treatment. Failure to do so may result in an enforcement action on the generator of the hazardous waste.

If you have any questions regarding this letter, please contact me at (214) 665-6669.

Sincerely,

Kishor Fruitwala, Ph.D., P.E.
Chief, RCRA Permits Section
Multimedia Division, EPA Region 6

cc: Ann Finney (LDEQ)

Message

From: Galbraith, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0ABF7F5C1A5E462E8096CB58EF9757EB-MGALBRAI]
Sent: 12/22/2016 4:22:50 PM
To: Haynes, LaShan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a9654dc151ea47e88ab75d6ab4b6fe91-Haynes, LaShan]
CC: Kaps, Melissa [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2fd9ca1cc4f145df83c8bdd2b683a290-mkaps]; Atagi, Tracy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ebcfd670077440dfb63a691749f20af2-TATAGI]; Elliott, Ross [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33cb08013cc94c21a3e3236dbad4c4a4-REELLIOT]; Gerhard, Sasha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=409f48684eb4422cb13177fc9702d0fa-Gerhard, Sasha]; Young, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=26404c78d3dc441f810ac723cf8f9d49-JBIEGELS]
Subject: email attachments claimed cbi after the fact

Hi LaShan. So here's a new situation for me. Region 5 sent an informal information request (via a letter) to a facility. Region 5 emailed me a copy of the final letter, and I forwarded it to 5 other people in ORCR.

The facility later came back and claimed the letter region 5 sent CBI (see long email thread below if needed).

Question I have is how do we handle the emails that are in our mailboxes now that the attachment to that email is now claimed CBI?

From: Lee, Jae
Sent: Wednesday, December 21, 2016 9:27 AM
To: Chow, Kevin <chow.kevin@epa.gov>; Cunningham, Michael <cunningham.michael@epa.gov>; Valentino, Michael <Valentino.Michael@epa.gov>; Galbraith, Michael <Galbraith.Michael@epa.gov>; SCHROER, CRAIG <CSCHROER@idem.IN.gov>
Subject: FW: Tradebe Information Request Letter

fyi

From: Tita LaGrimas [mailto:Tita.LaGrimas@tradebe.com]
Sent: Tuesday, December 20, 2016 4:28 PM
To: Lee, Jae <lee.jae@epa.gov>
Cc: Setnicar, Mary <Setnicar.Mary@epa.gov>
Subject: RE: Tradebe Information Request Letter

Dear Jae,

Attached is Tradebe request for selected questions contained in USEPA Region 5's letter dated December 15, 2016 are treated under CBI.

Please feel free to contact me if you have any questions, I can be reached at 219.746.8713.
Respectfully,
Tita

Tita LaGrimas
Executive VP of Regulatory Affairs
Tradebe Environmental Services, LLC

1433 E 83rd Ave, Suite 200
Merrillville, IN 46410 United States
Office: +1 (219) 354-2352
www.tradebeusa.com

From: Lee, Jae [mailto:lee.jae@epa.gov]
Sent: Friday, December 16, 2016 12:41 PM
To: Tita LaGrimas
Subject: RE: Tradebe Information Request Letter

Thank you Tita.

You can specify the question numbers and a short description of each suggested question why it could be a CBI.

It is a rare event that we treat our own letter as a CBI.

We need to review your claim to make a proper decision.

Jae

From: Tita LaGrimas [mailto:Tita.LaGrimas@tradebe.com]
Sent: Friday, December 16, 2016 12:13 PM
To: Lee, Jae <lee.jae@epa.gov>
Cc: SCHROER, CRAIG <CSCHROER@idem.IN.gov>; Setnicar, Mary <Setnicar.Mary@epa.gov>
Subject: RE: Tradebe Information Request Letter
Importance: High

Dear Jae,

I wanted to get this to you right away, please let me know what additional information is required to maintain the following questions from Region 5's December 15, 2016 letter as CBI! I can be reached at 219.756.8713.

EPA Region V	
Item 1	CBI
Item 2	CBI
Item 3	non-cbi
Item 4	non-cbi
Item 5	non-cbi
Item 6	non cbi
Item 7	non-cbi
Item 8	non-cbi
Item 9	CBI

Item 10	CBI
Item 11	CBI
Item 12	CBI
Item 13	CBI
Item 14	CBI
Item 15	CBI
Item 16	non-CBI
Item 17	CBI
Item 18	non-CBI
Item 19	CBI
Item 20	CBI
Item 21	non-CBI
Item 22	CBI
Item 23	CBI
Item 24	non-CBI
Item 25	CBI
Item 26	non-CBI

Respectfully,
Tita

Tita LaGrimas
Executive VP of Regulatory Affairs
Tradebe Environmental Services, LLC

1433 E 83rd Ave, Suite 200
Merrillville, IN 46410 United States
Office: +1 (219) 354-2352
www.tradebeusa.com

From: Tita LaGrimas
Sent: Friday, December 16, 2016 11:01 AM
To: 'Lee, Jae'
Cc: SCHROER, CRAIG; Setnicar, Mary
Subject: RE: Tradebe Information Request Letter

Thank you Jae and I apologize. In my hast of generating my email to you to protect the confidential information I meant to include a statement that we are presently reviewing the USEPA's questions and will identify today the questions that contain confidential information.
I will get right back to you.
Respectfully,
Tita

Tita LaGrimas
Executive VP of Regulatory Affairs
Tradebe Environmental Services, LLC

1433 E 83rd Ave, Suite 200
Merrillville, IN 46410 United States
Office: +1 (219) 354-2352
www.tradebeusa.com

From: Lee, Jae [mailto:lee.jae@epa.gov]
Sent: Friday, December 16, 2016 10:57 AM
To: Tita LaGrimas
Cc: SCHROER, CRAIG; Setnicar, Mary
Subject: RE: Tradebe Information Request Letter

Tita, Thank you for letting us know the potential confidential nature of the information request letter dated December 15, 2016.

Since your email contains no specific information about which questions are potentially confidential nature, we cant's mark the entire December 15, 2016 Information request letter as a confidential business information (CBI) at this time. However, with respect to your claim, we will not release this letter to the public until you submit more specific information about the types of CBI questions in the letter.

When you submit a response for the letter, you can certainly request EPA to mark certain types of questions as CBI of the December 15, 2016 letter.

If we receive any Freedom of Information Act (FOIA) request of the letter, we can contact you first for any additional information about your claim of the CBI of the letter.

Please let us know the tentative response submittal date of the Information Request.
After we receive the Tradebe's response, we can arrange a meeting to discuss the submitted response.

Thank you

Jae Lee

From: Tita LaGrimas [mailto:Tita.LaGrimas@tradebe.com]
Sent: Friday, December 16, 2016 10:06 AM
To: Lee, Jae <lee.jae@epa.gov>
Cc: SCHROER, CRAIG <CSCHROER@idem.IN.gov>; Setnicar, Mary <Setnicar.Mary@epa.gov>
Subject: RE: Tradebe Information Request Letter

Good morning Jae,

Tradebe is looking forward to continue working with USEPA Region 5, once the information is provided Tradebe would like to come Region 5's office to review our responses with you.

To follow up on our telephone conversation this morning there are several items contained in USEPA's letter that are related to Tradebe's confidential information (information submitted to Region 5 and IDEM in

accordance with State and Federal Confidentiality Requirements), therefore I respectfully request we maintain USEPA's letter as confidential document and not available to the public.

Please let me know if you have any questions or we need to discuss this further, I can be reached at 219.746.8713.
Thank you for your time and consideration.
Respectfully,
Tita

Tita LaGrimas
Executive VP of Regulatory Affairs
Tradebe Environmental Services, LLC

1433 E 83rd Ave, Suite 200
Merrillville, IN 46410 United States
Office: +1 (219) 354-2352
www.tradebeusa.com

TRADEBE

From: Lee, Jae [mailto:lee.jae@epa.gov]
Sent: Thursday, December 15, 2016 9:57 AM
To: Tita LaGrimas
Cc: SCHROER, CRAIG; Setnicar, Mary
Subject: Tradebe Information Request Letter

Tita,

The information request letter for Tradebe is attached.

If you need an original letter and/or word-version of the letter, please let me know.

Jae Lee
RCRA/Tsca Section
EPA Region 5
312-886-3781